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Pat 166 85796 M. S. & C.

# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 14

FEDERAL TRADE COMMISSION, PETITIONER

vs.

STANDARD EDUCATION SOCIETY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 15, 1937
CERTIORARI GRANTED APRIL 26, 1937

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# In the United States Circuit Court of Appeals for the Second Circuit

OCTOBER TERM, 1935

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FEDERAL TRADE COMMISSION, PETITIONER

*v.*

STANDARD EDUCATION SOCIETY ET AL., RESPONDENTS

---

**APPLICATION FOR THE ENFORCEMENT OF AN ORDER OF THE FEDERAL TRADE COMMISSION**

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TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

The Federal Trade Commission (hereinafter referred to as "The Commission"), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 717, 720; 15 U. S. C. A., Sec. 45), known as the Federal Trade Commission Act, respectfully applies to this Honorable Court for the enforcement of a certain order issued by it on the 24th day of December 1931 against the respondents: Standard Education Society, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener. The proceeding in which said order was entered is known upon the records of the Com-

mission as Docket No. 1574, the title thereof being *"In the matter of Standard Education Society, a corporation; Standard Encyclopedia Corporation; H. M. Stanford, individually and as President and Director of Standard Education Society and as President and Director of Standard Encyclopedia Corporation; W. H. Ward, individually and as Director of Standard Encyclopedia Corporation and as Secretary and Director of Standard Education Society; and A. J. Greener, individually and as Director of Standard Encyclopedia Corporation, and as Director of Standard Education Society."*

In support of such application, petitioner respectfully shows as follows:

(1) The respondent Standard Education Society is a corporation organized, existing, and doing business under the laws of Minnesota, with its principal place of business located in the city of Chicago, Illinois. The respondent Standard Encyclopedia Corporation is a corporation organized, existing, and doing business under the laws of Illinois, with its principal place of business located in the city of Chicago, Illinois. Respondent H. M. Stanford is president and general manager, a director, and owner of 250½ shares of the 536 shares of stock of the Standard Education Society outstanding, and was an incorporator of and is acting as and has held himself out as president of the respondent Standard Encyclopedia Corporation. Respondent W. H. Ward is secretary, a director, and the owner of

250½ shares of stock in the Standard Education Society; he is also a director and was one of the incorporators of the respondent Standard Encyclopedia Corporation. Respondent A. J. Greener is a stockholder in the Standard Education Society, holding 35 shares of stock of said corporation, and is now and has been for many years in charge of the financial affairs of said corporation as comptroller, auditor, and manager; and the said A. J. Greener is one of the incorporators of the respondent Standard Encyclopedia Corporation. The respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the managers and sole stockholders of the respondent Standard Education Society and the managers and sole incorporators of respondent Standard Encyclopedia Corporation. Respondents are now and for several years last past have been engaged in the sale and distribution, in interstate commerce, of encyclopedias or reference works, so-called "extension services", and works of fiction by well-known authors; and, in the course and conduct of their said business, cause and have caused said encyclopedias or reference works, said so-called "extension services", and works of fiction, when so sold by them, to be transported in interstate commerce from their said places of business in the State of Illinois, and from other States, to, into, and through States of the United States (*including the State of New York*) other than Illinois and the other States from which

they are or have been shipped, to the purchasers thereof.

(2) On February 25, 1929, the Commission issued its complaint against the respondent Standard Education Society and the respondent H. M. Stanford, individually and as President thereof, charging the use of unfair methods of competition in interstate commerce in violation of Section 5 of said Act of September 26, 1914 (the Federal Trade Commission Act), in offering for sale and selling, in such commerce, said encyclopedias or reference works and said so-called "extension service." Said methods of competition so alleged to be unfair and in violation of said Section 5 were in said complaint designated and described fully and in detail.

Said complaint was, on February 27, 1929, served upon said respondents Standard Education Society and H. M. Stanford, as required by law. The complaint appears in full in the transcript of the record filed herein (Tr. 2–7).

(3) Thereafter, on March 28, 1929, said respondents Standard Education Society and H. M. Stanford filed their respective answers to the said complaint. The answers appear in full in the transcript of the record filed herein (Tr. 8–11, 12–13).

(4) Thereafter, the matter being ready for trial, testimony and other evidence in support of the charges stated in the complaint and in opposition thereto were adduced by the parties to said proceed-

ing at hearings before examiners of the Commission theretofore duly appointed. Such testimony was reduced to writing and filed, with the other evidence, in the office of the Commission, as required by law (Tr. 81–414).

(5) Thereafter, on December 4, 1929, the Commission issued its supplemental complaint against the respondents: Standard Education Society; Standard Encyclopedia Corporation; H. M. Stanford, W. H. Ward, and A. J. Greener, charging the use of unfair methods of competition in interstate commerce in violation of Section 5 of said Federal Trade Commission Act. Said methods of competition so alleged to be unfair and in violation of said Section 5 were in said supplemental complaint designated and described fully and in detail.

Said supplemental complaint was, on December 7, 1929, served upon the several said respondents, as required by law. The supplemental complaint appears in full in the transcript of the record filed herein (Tr. 20–26).

(6) Thereafter, on January 6, 1930, the respondents Standard Enyclopedia Corporation, W. H. Ward, and A. J. Greener filed their respective answers to said supplemental complaint; and, on January 23, 1930, the respondent A. J. Greener filed an amended answer to the supplemental complaint. Said answers appear in full in the transcript of the record filed herein (Tr. 27–28, 29–31, 32–33).

(7) Thereafter, testimony and other evidence in support of the charges stated in the supplemental complaint and in opposition thereto were adduced by the parties to said proceeding before an examiner of the Commission theretofore duly appointed. Such testimony was reduced to writing and filed, with the other evidence, in the office of the Commission, as required by law (Tr. 415–470).

(8) Thereafter, a final hearing of said proceeding was had before the Commission upon the record and upon the brief and oral argument of counsel for the Commission and brief of counsel for the respondents (counsel for the respondents not presenting himself for oral argument, although duly notified thereof); and the Commission, having duly considered the record and being fully advised in the premises, and being of the opinion that the methods of competition charged in the said complaint and supplemental complaint were prohibited by said Federal Trade Commission Act, on December 24, 1931, made and entered its report in writing, in which it stated its findings as to the facts and its conclusion based thereon (Tr. 65–77); and thereafter, on December 24, 1931, the Commission issued, and, on December 28, 1931, served upon the respective respondents its order to cease and desist (Tr. 78–80), which, omitting formal parts, reads as follows:

> It is now ordered that the respondents, Standard Education Society, a corporation; Standard Encyclopedia Corporation; H. M.

Stanford; W. H. Ward; and A. J. Greener, and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from—

(1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact.

(2) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

(3) Advertising or representing in any manner that purchasers or prospective purchasers of respondents' publications are only buying or paying for loose-leaf supplements intended to keep the set of books up to date for a period of ten years, when such is not the fact.

(4) Advertising or representing in any manner that respondents' publication is a recently completed, new, and up-to-date encyclopedia, when such is not the fact.

(5) Selling or offering for sale any set of books of the same text and content material under more than one name or title.

(6) Advertising or representing in any manner that the usual price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or representations, when such is not the fact.

(7) Advertising or representing any person as a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

(8) Advertising or representing that any person has given testimonials or recommendations for and concerning respondents' publications, when such is not the fact.

(9) Publishing or causing to be published and circulated testimonials or recommendations of and concerning respondents' publications alleged to have been made by any person when such testimonials or recommendations have not been made by such person.

It is further ordered that the respondents, Standard Education Society, a corporation, H. M. Stanford, W. H. Ward, and A. J. Greener, and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any home study course of instruction in commerce among the several States of the

United States or in the District of Columbia, do cease and desist from:

(1) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers as a "Special Introductory Enrollment", and at a specially reduced price, when such is not the fact.

It is further ordered that respondents shall within sixty (60) days from the date of the service upon them of the order herein file with the Commission a report in writing setting forth in detail the manner and form in which the order has been complied with and conformed to.

(9) The said order to cease and desist is still in full force and effect, and has been at all times since its said issuance and service.

(10) Respondents Standard Education Society, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener have failed and neglected to obey said order to cease and desist.

(11) The methods of competition employed by said respondents in the proceeding herein, and against which said order to cease and desist was issued, were used by said respondents within the jurisdiction of this Court, to wit, within the State of New York.

WHEREFORE, the Commission applies to this Honorable Court for the enforcement of its said order of December 24, 1931, and accordingly certifies and

files with this application a transcript of the record in the proceeding before the Commission against the respective respondents named herein.

THE FEDERAL TRADE COMMISSION PRAYS this Honorable Court that it cause notice of the filing of this application and transcript to be served upon the respective respondents, and that this Court take jurisdiction of the proceeding and of the questions determined therein, and make and enter upon the pleadings and proceedings set forth in such transcript a decree affirming said order of the Commission and commanding the respondents, Standard Education Society, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener, and each of them, and their officers, agents, representatives, and employees, to comply therewith.

W. T. KELLEY,
*Chief Counsel, Federal Trade Commission.*
MARTIN A. MORRISON,
*Assistant Chief Counsel.*
JAMES W. NICHOL,
*Attorneys for the Petitioner.*

CITY OF WASHINGTON,

*District of Columbia, ss:*

OTIS B. JOHNSON, being first duly sworn, on his oath says that he is the Secretary of the Federal Trade Commission, and as such is authorized to make this affidavit on its behalf, and that he makes this affidavit on behalf of such Commission; that he has read the foregoing application and has knowledge of the facts stated therein; and that the statements in the foregoing application are true to the best of his knowledge and belief.

OTIS B. JOHNSON,

*Secretary, Federal Trade Commission.*

Subscribed and sworn to before me this 18th day of November 1935.

[SEAL] EDNA B. VINCEL,

*Notary Public.*

My commission expires June 9, 1939.



U. S. GOVERNMENT PRINTING OFFICE: 1935

IN UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT

FEDERAL TRADE COMMISSION, PETITIONER

*against*

STANDARD EDUCATION SOCIETY ET AL., RESPONDENTS

Corporate respondents, Standard Education Society and Standard Encyclopedia Corporation, and the individual respondents, H. M. Stanford, W. H. Ward, and A. J. Greener, by their attorney, Henry Ward Beer, for their answer to the Federal Trade Commission's application for the enforcement of its order to cease and desist, respectfully allege:

(1) They reiterate and reallege all the allegations contained in their separate answers, now a part of the transcript of record on file in this court (Tr. 8–11, 12–13, 27–28, 29–31, 32–33), as of the time when issues were joined before the Federal Trade Commission.

(2) Further answering said application, the respondents admit the allegations set forth in petitioner's application, paragraphs 2–8.

(3) Further answering, the respondents deny the allegations set forth in paragraphs 9, 10, and 11.

Wherefore, corporate respondents, Standard Education Society and Standard Encyclopedia Corporation and the individual respondents, H. M. Stanford, W. H. Ward, and A. J. Greener pray that the said application be dismissed and the order to cease and desist herein be vacated and set aside.

Dated October 1, 1936.

STANDARD EDUCATION SOCIETY,
STANDARD ENCYCLOPEDIA CORPORATION,
H. M. STANFORD,
W. H. WARD, and
A. J. GREENER,
By HENRY WARD BEER,
*Attorney for Respondents.*

United States Circuit Court of Appeals, Second Circuit

FEDERAL TRADE COMMISSION, PETITIONER

*vs.*

STANDARD EDUCATION SOCIETY ET AL., RESPONDENTS

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify the annexed page to be a true copy of corresponding pages contained in the "Answer and Brief for the Respondents" filed in this court in the above entitled case.

Dated March 17, 1937.

(Sgd.) WM. PARKIN, *Clerk.*



144955—37 U. S. GOVERNMENT PRINTING OFFICE: 1937

## CERTIFICATE OF SECRETARY OF THE FEDERAL TRADE COMMISSION

(October 15, 1935)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION, *ss:*

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

I, Otis B. Johnson, Secretary of the Federal Trade Commission, do hereby certify that transmitted herewith is a full, true, and correct transcript of proceedings had before the Federal Trade Commission in the above-entitled matter, consisting of:

Part 1. Pleadings and testimony

Part 2. Exhibits

and separate original exhibits marked:

| 1 | 2 | 3 |
|---|---|---|
| 1574 | 1574 | 1574 |

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to the filing in said court of an application for enforcement of an order to cease and desist dated December 24, 1931, entered by the Federal Trade Commission in this proceeding.

In witness whereof I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the city of Washington, D. C., this 15th day of October, A. D. 1935.

[SEAL] OTIS B. JOHNSON, *Secretary.*

# COMPLAINT

(February 25, 1929)

UNITED STATES OF AMERICA BEFORE

FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

## COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Standard Education Society, a corporation, and H. M. Stanford, individually and as president of the Standard Education Society, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH ONE. Respondent, Standard Education Society, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located in the city of Chicago, State of Illinois. Respondent, H. M. Stanford, is president and general manager and principal owner of the stock of the Standard Education Society. Respondents, Standard Education Society and H. M. Stanford, are now and for more than five years last past have been engaged in the compilation and/or production of sets of encyclopedias or reference works and/or so-called "extension services" in connection therewith, and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped and transported in interstate commerce from their place of business located

in the State of Illinois to purchasers thereof located in States of the United States other than the State of Illinois. Respondents, in the course and conduct of their business, are and at all times herein referred to have been in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of books, sets of encyclopedias, or reference works and/or so-called "extension services" in connection therewith.

PARAGRAPH Two. Respondents employed various agents, upon a commission basis, in the several States of the United States to sell their encyclopedias, reference books, and/or so-called "extension services" in connection therewith by personal solicitation. The orders received by the said agents are transmitted to the main office of respondents in Chicago, Illinois, and the said books or publications are shipped in interstate commerce from the city of Chicago to the purchasers so ordering them at their respective places of residence in the several States of the United States and in the District of Columbia. Respondents sell their said encyclopedias, reference books, and/or so-called "extension services" in connection therewith in the manner above set forth to school teachers, students, businessmen, and to the general public located in the several States of the United States, and for the purpose of selling said products in commerce between and among the various States of the United States, respondents have adopted and employed and are now employing the following methods, to wit:

(*a*) Respondents distribute among prospective customers located in the several States of the United States circular letters and other literature in which they represent that complimentary sets of the Standard Reference Work will be distributed among a few representative people before respondents institute their sales campaign, and that the cost in connection therewith is absorbed by their advertising appropriation; that a loose-leaf extension service, which keeps their encyclopedia constantly up to date, is a most attractive feature of their work, and that their new Standard Reference Work has recently been completed by some of the best-known editors in the United States, and splendid endorsements already received from some of the leading colleges and schools throughout the country; that to recipients of complimentary sets the loose-leaf extension service will be supplied on the same terms as to regular subscribers. Respondents request the recipients of the aforesaid circulars or literature to treat same as personal and confidential and emphasize that they are authorized to present said recipients with a complete, full bound set of this new work, in an art-craft de luxe edition with the compliments of the publishers.

(*b*) Respondents represent through their salesmen or agents and by other means that they will present free of charge to prospective customers a certain number of their reference books or sets of encyclopedias entitled "The Standard Reference Work" upon the condition that the said prospective customers subscribe to and purchase the so-called "extension service" designated "The Standard Loose-Leaf Extension Service" for a specified sum of money and for a specified period of time, the said sum of money being represented to be a special price offered for advertising purposes to a limited number of persons residing in a given community, and/or as being a price much lower than the price regularly charged for their books or sets of encyclopedias and/or loose-leaf extension service, when in truth and in fact said sum of money, represented as aforesaid, was and is the usual and customary price to all persons who can be induced to purchase said reference books, sets of encyclopedias, and/or loose-leaf extension service, and when in truth and in fact it is not the practice of said respondents to confine their aforesaid representations and offers or those of their salesmen or agents to a certain number of persons, solicited or otherwise, in each community who had been designated to receive the said books or sets of encyclopedias or any form of service free, but it was and is the practice, intention, and desire of respondents to dispose of the aforesaid products to the general public in each community and at the same price or figure, and when in truth and in fact the respondents had not and do not set aside a certain number of their books or encyclopedias for advertising purposes to be given free as indicated by the representations of respondents or by other means.

(*c*) Respondents represent and have represented through their salesmen or agents and through circulars and by other means that they will give away free, as a premium, certain books or sets of books written by well-known authors, to subscribers of their sets of encyclopedias and/or loose-leaf extension service, when in truth and in fact the said books or sets of books so offered as free, gifts, or premiums for the subscription so obtained were not given away, but the cost thereof was included in the price asked for the said subscriptions.

(*d*) Respondents have made and are making use of alleged testimonials or recommendations of certain prominent educators and others known to prospective customers and have represented and do represent that respondents' publications have been authorized and approved or endorsed by numerous State boards of education, when in truth and in fact the said alleged testimonials or recommendations or endorsements

were not authorized or made by and/or used with the knowledge and approval of said educators, or approved by the various State boards of education as alleged.

(*e*) Respondents have represented and represent through their salesmen or agents, by the use of prospectuses and otherwise, that their said reference books or sets of encyclopedias were recently completed and had been copyrighted in 1926, when in truth and in fact such was not the case.

(*f*) Respondents have caused and do cause their said sets of encyclopedias or reference works and/or their loose-leaf or revision services to be advertised and sold in interstate commerce under the various titles "Standard Reference Work", published by Standard Education Society, and "National Encyclopedia, published by National Encyclopedia Company", when in truth and in fact the said encyclopedia and/or the said loose-leaf extension service, though advertised and sold under the different titles aforesaid, were the same or substantially the same works or products.

(*g*) Respondents have caused and do cause to be advertised and distributed through their salesmen or agents and otherwise, among prospective customers or students located in various States of the United States, a contract in connection with their so-called "Standard Extension University", the said contract having printed on its top border in red ink the statement "Special Introductory Enrollment this is a life-time scholarship", when in truth and in fact the said contract, its quoted enrollment fee, and other contents were in no wise "Special" but were the same as have always been used by the respondents in soliciting the sale of and selling their courses to customers or students or prospective customers or students located in various States of the United States.

PARAGRAPH THREE. Respondents have represented and do represent to the prospective purchasers of their encyclopedias or books of reference and/or their so-called "loose-leaf extension service", that the customary and regular prices of said works or products to the public are certain specified prices, which said specified prices, are fictitious and grossly exaggerated and which prices far exceed the usual and customary prices at which respondents actually offered or offer or expect to sell the same, and greatly in excess of the real value of same.

PARAGRAPH FOUR. The acts and things above alleged to have been done by respondents are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers

and duties, and for other purposes", approved September 26, 1914.

Wherefore, the premises considered, the Federal Trade Commission on this 25th day of February, A. D. 1929, now here issues this its complaint against said respondents.

NOTICE

Notice is hereby given you, the respondents above named, respondents herein, that the 10th day of April, A. D. 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time and the offices of the Federal Trade Commission, in the city of Washington, D. C., as the place when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in this complaint.

You are notified and required within 30 days from service of the complaint unless such time be extended by order of the Commission to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answer and failure to answer (rule III) provide as follows:

(1) In case respondents shall desire to contest the proceedings such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondents shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondents are without knowledge, in which case respondents shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer unless respondents shall state in the answer that respondents are without knowledge shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondents desire to waive hearing on the charges set forth in the complaint and not to contest the proceeding the answer may consist of a statement that respondents refrain from contesting the proceeding or that respondents consent that the Commission may make, enter, and serve upon respondents an order to cease and desist from the violation of the law alleged in the complaint or that respondents admit all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondents to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In witness whereof the Federal Trade Commission has caused this complaint to be signed by its secretary, and its official seal to be hereto affixed, at Washington, D. C., this 25th day of February, A. D. 1929.

By the Commission:

[SEAL] OTIS B. JOHNSON, *Secretary.*

## ANSWER—STANDARD EDUCATION SOCIETY

(Filed Mar. 28, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

### SEPARATE ANSWER OF STANDARD EDUCATION SOCIETY, A CORPORATION

Now comes Standard Education Society, a corporation, respondent herein, and for answer unto the complaint, answering says:

Denies that the Federal Trade Commission is acting in the public interest pursuant to said act of Congress, as alleged in said complaint, and denies that this respondent is using unfair methods of competition in interstate commerce in violation of section 5 of said act of Congress.

PARAGRAPH ONE. This respondent admits that it is a corporation organized and existing under the laws of the State of Minnesota and licensed to do business in the State of Illinois, and with its principal place of business in the city of Chicago, and State of Illinois; admits that it has been engaged in the compilation, production, and sale of encyclopedias, reference works, and loose-leaf extension service in connection therewith in interstate commerce throughout the United States, as alleged in said paragraph of said complaint.

PARAGRAPH TWO. This respondent admits that it employs various agents upon a commission basis in the several States of the United States to sell said encyclopedias, reference works, and loose-leaf extension service in part by personal solicitation, and admits that said orders for said books and publications are transmitted to the respondent at Chicago, Illinois, in compliance with said orders to the various States in the United States and in the District of Columbia, and

that said sales are made to the general public in the several States; but denies that this respondent had adopted or employed or is now employing all of the methods set forth in paragraph two of said complaint.

(*a*) This respondent denies that it distributes or knowingly permits its agents to distribute by circular letters or other literature that complimentary sets of said Standard Reference Work will be distributed free to representative people before instituting its sales campaign in connection therewith. Respondent admits that this practice was in existence prior to approximately two years ago, but that same was discontinued by this respondent approximately two years ago and has not been authorized or used during the past two years or more, and denies that said method of distribution as set forth in said section (*a*) of paragraph two is an unfair method of competition within the meaning of section 5 of said act of Congress.

(*b*) This respondent denies that it does or permits its salesmen or agents by any means to represent that it will present free of charge to prospective customers a certain number of said The Standard Reference Work upon condition that such prospective customers subscribe to and purchase The Standard Loose Leaf Extension Service for a specific sum of money, or to represent that the said sum of money so represented is a special price for advertising purposes, and denies that it was represented that the price is lower than the price regularly charged for their books, encyclopedias, and/or loose-leaf extension service, and avers that the literature and applications or subscriptions for the purchase of the encyclopedias, reference work, loose-leaf extension service, and other books are plainly and clearly stated upon the order blank furnished by this respondent for one price for the entire set, and that no representations of prices of any portions thereof are authorized or are permitted to be made by the agents by this respondent, and that if this respondent discovers any agents violating or making representations contained in paragraph (*b*), that said agents are immediately rebuked therefor and upon a second offense are promptly dismissed from the service.

(*c*) This respondent denies that it represents or permits its salesmen or agents through circulars or other means to represent that respondent gives away free as a premium sets of books written by well-known authors to subscribers for encyclopedias, reference work and loose-leaf extension service, but avers that the complete sets of books to be delivered for a certain price are clearly and plainly mentioned in the order blanks furnished by this respondent to its agents.

(*d*) This respondent denies that it makes use of any testimonials or recommendations of educators or others, except

those which are authorized in writing by the representative persons and upon the request of any such educator that his testimonial be no longer used same is promptly discontinued.

(*e*) This respondent denies that it represents to its salesmen or agents that said encyclopedias were recently completed and copyrighted in the year 1926, but avers that in a few specific instances the printer erroneously used the year 1926 when, in fact, said books were actually copyrighted in the year 1923 and as revised were recopyrighted in the year 1925 and as revised were recopyrighted in the year 1927, and that said dates are correct.

(*f*) This respondent denies that it has continuously made a business of causing its reference work known as "The Standard Reference Work", to be published and sold under the name of the "National Encyclopedia", but avers that some years ago a certain independent dealer requested that a certain number of said Standard Reference Work be bound under the title, "The National Encyclopedia" for sale in a special locality and that this respondent did so publish and bind a limited number of said volumes under said title and that said independent dealer failed in business and was unable to fulfill his contract, and that thereupon the respondent resold said volumes on hand in certain remote territories and principally without the United States of America. In the event that any purchaser of The National Encyclopedia discovered that he possessed The Standard Reference Work the said The National Encyclopedia was returned and the entire sum of money refunded; and denies that this respondent has made a practice of selling said encyclopedias other than as herein alleged.

(*g*) This respondent denies that it caused or does cause to be advertised and distributed through its salesmen or agents or otherwise, among prospective customers a contract in connection with its Standard Extension University having printed on its top border the words "Special Introductory Enrollment this is a life-time scholarship", and avers that when said department was first established, approximately two years ago, said words were printed as alleged, but that about one year ago same was voluntarily discontinued by this respondent and all order blanks and contracts were promptly modified and said words completely eliminated and same has not been in use in any shape, manner, or form for approximately one year or more last past, and that this respondent has no intention of reviving the use of the same.

PARAGRAPH THREE. This respondent denies that it has represented or does represent to prospective purchasers of its encyclopedias, books of reference, and loose-leaf extension service, that the customary and regular prices therefor are

different from those mentioned and described in the order blanks, and denies that any prices therefor are fictitious or grossly exaggerated or that said prices quoted exceed the usual and customary prices, and avers that respondent sells its reference work, loose-leaf extension service, and other books for one specified price and that no representations are made or authorized as to the prices of any one set standing alone or that the usual prices for the combined set are different from that printed on said contract form.

PARAGRAPH FOUR. This respondent denies that any of the acts or things alleged in said complaint or any of the acts or things actually done by this respondent in the sale and distribution of its books of reference, extension service, or other books, constitute unfair methods of competition in commerce within the meaning and intent of section 5 of the act of Congress referred to in said complaint.

And now having answered complaint herein, this respondent prays that same may be dismissed.

STANDARD EDUCATION SOCIETY,
By H. M. STANFORD, *President.*
*134 N. La Salle St., Chicago, Illinois.*

LANGWORTHY, STEVENS, MCKEAG & HURLEY,
*Attorneys for Respondent,*
*First National Bank Bldg., Chicago, Illinois.*

## ANSWER—H. M. STANFORD

(Filed Mar. 28, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

SEPARATE ANSWER OF H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF THE STANDARD EDUCATION SOCIETY

Now comes H. M. Stanford, made respondent herein, individually and as president of the Standard Education Society, and for answer unto the complaint, or so much thereof as he is advised is material for him to answer, answering, says:

He denies that the Federal Trade Commission is acting in the public interest pursuant to the provisions of an act of Congress, as alleged; and denies that he, either individually or as president of the Standard Education Society, is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act of Congress.

PARAGRAPH ONE. Respondent admits that he is president, general manager, and a stockholder of the Standard Education Society, but denies that he, individually or as president of said Standard Education Society, a corporation, is now, or has at any time, been engaged in the compilation and/or production of encyclopedias or reference works and/or so-called "extension services" in connection therewith in interstate commerce, as alleged; denies that he, individually or as president of said Standard Education Society, is in competition with other corporations, individuals, firms, or partnerships, engaged in the sale of similar articles.

PARAGRAPH TWO. This respondent, individually and as president aforesaid, denies that he employed various agents in any form, or in any place, to sell encyclopedias; denies that individually or as president of said corporation he sells en-

cyclopedias, as alleged in said complaint, to anyone; denies that he is engaged in commerce between and among the various States of the United States; denies that he, individually or as president of said corporation, adopted or employed or is now using either or any of the methods set forth in the complaint in paragraph two, sections (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), or (*g*), as fully as though he had specifically denied each and every allegation thereof.

PARAGRAPH THREE. This respondent, individually and as president aforesaid, denies that he has represented or does represent, or make any representations of any kind to prospective purchasers of encyclopedias or loose-leaf extension service for customary and regular prices thereof, or any prices whatsoever.

PARAGRAPH FOUR. This respondent, individually and as president of said corporation, denies that he is engaged in interstate commerce; denies that he has done or performed, or failed to perform, any act, as alleged in the complaint, to the prejudice of the public or any other person, firm, or corporation which constitutes an unfair method of competition in violation of section 5 of said act of Congress.

Wherefore this respondent, individually and as president aforesaid, requests that said complaint be dismissed as to him individually and as president of the Standard Education Society, a corporation.

H. M. STANFORD,
*Individually and as President of*
*Standard Education Society,*
*134 N. LaSalle St., Chicago, Illinois.*

LANGWORTHY, STEVENS, MCKEAG & HURLEY,
*Attorneys for Respondent,*
*First National Bank Bldg., Chicago, Illinois.*

## ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

(April 24, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 24th day of April, A. D. 1929.

Commissioners: Edgar A. McCulloch, chairman; Garland S. Ferguson, Jr.; C. W. Hunt; William E. Humphrey; Charles H. March.

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION, AND H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony,

It is ordered that Edward M. Averill, an examiner of this Commission be, and he hereby is, designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law.

It is further ordered that the taking of testimony in this proceeding begin on Wednesday, May 8, 1929, at 10:00 o'clock in the forenoon of that day, at the office of the custodian, Bradford County Court House, Towanda, Pennsylvania.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and receive evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission:

[SEAL] OTIS B. JOHNSON, *Secretary.*

## ORDER APPOINTING EXAMINER TO TAKE TESTIMONY ON THE PACIFIC COAST

(July 19, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 19th day of July, A. D. 1929.

Commissioners: Edgar A. McCulloch, chairman; Garland S. Ferguson, Jr.; C. W. Hunt; William E. Humphrey; Charles H. March.

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION, AND H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

ORDER APPOINTING JOHN W. ADDISON TO TAKE TESTIMONY ON PACIFIC COAST

Whereas the taking of testimony in this matter having proceeded before Edward M. Averill, an examiner of this Commission, duly appointed to take testimony and receive evidence herein, and whereas the said Edward M. Averill, by reason of other duties to perform, will be unable to preside at hearings in this case scheduled to be held on the Pacific coast,

It is ordered that John W. Addison, an examiner of this Commission, be, and he hereby is, designated and appointed to take testimony and receive evidence in this proceeding in the territory of the Pacific coast, the aforesaid Edward M. Averill to resume charge of the case when and if testimony is to be taken elsewhere, and to prepare the trial examiner's report upon the facts when the case has been closed.

By the Commission:

[SEAL] OTIS B. JOHNSON, *Secretary.*

## MOTION FOR ISSUANCE OF SUPPLEMENTAL COMPLAINT

(November 29, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF THE STANDARD EDUCATION SOCIETY

MOTION FOR ISSUANCE OF SUPPLEMENTAL COMPLAINT

Comes now Robt. E. Healy, Chief Counsel of the Federal Trade Commission, and shows to the Commission that the three individuals H. M. Stanford, W. H. Ward, and A. J. Greener, who are the directors and sole stockholders of the respondent corporation, have, subsequent to the issuance of the complaint herein, organized a new corporation known as the Standard Encyclopedia Corporation and that the respondent corporation herein has ceased functioning as a publisher of the Standard Reference Work and is engaged in selling only those copies of the Standard Reference Work which remain unsold from previous printings. The Standard Encyclopedia Corporation is now engaged in the publication and sale of the New Standard Encyclopedia, which is a revised edition of the Standard Reference Work, and the Chief Counsel of the Federal Trade Commission further shows to the Commission that the formation of the said Standard Encyclopedia Corporation was not known to the attorney for the Commission until November 8, 1929, on which day, testimony having been received on behalf of the Commission, the attorney for the Commission rested the Commission's case, and that no testimony in support of the respondent's answer has been received nor any date set for the reception thereof;

Wherefore, the Chief Counsel moves the Federal Trade Commission to issue a supplemental complaint herein charg-

ing the Standard Education Society, a corporation, Standard Encyclopedia Corporation, H. M. Stanford, individually, as president and director of the Standard Education Society and as president and director of the Standard Encyclopedia Corporation, and W. H. Ward and A. J. Greener, individually and as directors of the Standard Education Society and of the Standard Encyclopedia Corporation, with violation of section 5 of the Federal Trade Commission Act, and that such supplemental complaint issue against both said corporations and the three said individuals in accordance with the form attached hereto and made a part hereof; and further moves that the Commission reopen the Commission's case for the purpose of taking such additional testimony in support of the supplemental complaint as the attorney for the Commission shall deem necessary; and further moves that the Commission set a day certain as early as may be practicable to hear argument on behalf of and in opposition to the present motion, and that notice of hearing, together with a copy of the present motion and of the form of supplemental complaint proposed to be issued, be served upon respondents through their respective counsel and upon the proposed respondent.

ROBT. E. HEALY, *Chief Counsel.*

NOVEMBER 29, 1929.

## ORDER FOR ISSUANCE OF SUPPLEMENTAL COMPLAINT AND TO REOPEN THE COMMISSION'S CASE

(December 10, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 10th day of December, A. D. 1929.

Commissioners: Edgar A. McCulloch, Chairman; Garland S. Ferguson; C. W. Hunt; William E. Humphrey; Charles H. March.

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION, A CORPORATION; H. M. STANFORD; W. H. WARD; A. J. GREENER

ORDER FOR ISSUANCE OF SUPPLEMENTAL COMPLAINT AND TO REOPEN THE COMMISSION'S CASE

The above-entitled matter coming on for consideration, and it appearing that respondents H. M. Stanford, W. H. Ward, and A. J. Greener, who are the directors and sole stock owners of the respondent Standard Education Society, have, subsequent to issuance of a complaint against Standard Education Society and H. M. Stanford charging a violation of section 5 of the Federal Trade Commission Act, organized a corporation known as the Standard Encyclopedia Corporation, the said H. M. Stanford, W. H. Ward, and A. J. Greener being directors and sole stock owners of the said Standard Encyclopedia Corporation, and it further appearing that the Standard Encyclopedia Corporation is continuing the practices heretofore engaged in by the Standard Education Society alleged to be unfair methods of competition in interstate commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

It is hereby ordered that the Secretary issue supplemental complaint herein in the manner and form hereto attached, and that the same be served upon respondent Standard Education Society through counsel by whom its appearance herein was made, upon respondent H. M. Stanford through counsel by whom its appearance herein was made, and upon said Standard Encyclopedia Corporation, a corporation, W. H. Ward, and A. J. Greener, now to be added as parties respondent by the service of the said supplemental complaint.

It is further ordered that the Commission's case, heretofore closed, is reopened for the taking of such testimony in support of the supplemental complaint issued herein as the attorney for the Commission shall deem necessary.

By order of the Commission:

[SEAL] OTIS B. JOHNSON, *Secretary.*

# SUPPLEMENTAL COMPLAINT

(December 4, 1929)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY AND AS PRESIDENT AND DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY; AND A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION, AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

SUPPLEMENTAL COMPLAINT

Whereas the Federal Trade Commission, to wit, on the 25th day of February 1929, issued its complaint against the respondents, Standard Education Society and H. M. Stanford, charging that they were using unfair methods of competition in the offering for sale and sale of certain encyclopedias and/or reference works and/or so-called "extension service" in violation of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes"; and

Whereas since the issuance of said complaint the respondents, H. M. Stanford, W. H. Ward, and A. J. Greener, who are the directors and sole stockholders of the Standard Education Society, have organized a corporation known as "Standard Encyclopedia Corporation", in which Standard Encyclopedia Corporation, the said H. M. Stanford, W. H. Ward, and A. J. Greener are the directors and sole stockholders; and

Whereas the Standard Education Society has ceased publishing the encyclopedias and/or reference works which it heretofore published and is not now engaged in selling the said encyclopedias and/or reference works except in order to dispose of the supply of the same which it now has on hand; and

Whereas respondent Standard Encyclopedia Corporation is now engaged in compiling and/or producing sets of encyclopedias and/or reference works and/or so-called "extension service" in connection therewith and in the sale and distribution thereof in interstate commerce, the said encyclopedias and/or reference works being the same encyclopedias and/or reference works heretofore published by the Standard Education Society, except for certain revisions:

Wherefore the Federal Trade Commission brings this its supplemental complaint, adding to the original parties respondent the new corporation, Standard Encyclopedia Corporation and W. H. Ward, individually and as director of both Standard Education Society and Standard Encyclopedia Corporation, and A. J. Greener, individually and as director of both Standard Education Society and Standard Encyclopedia Corporation, and H. M. Stanford, as president and director of Standard Encyclopedia Corporation and as director of Standard Education Society, and thereunto alleges and charges as follows, to wit:

PARAGRAPH ONE. Respondent, Standard Education Society, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located in the city of Chicago, State of Illinois. Respondent H. M. Stanford is president and general manager, a director, and principal owner of the stock of Standard Education Society and president of respondent Standard Encyclopedia Corporation. Respondent Standard Encyclopedia Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, State of Illinois. Respondent W. H. Ward is secretary, a director, and a stockholder of respondent Standard Education Society. Respondent A. J. Greener is a stockholder and a director of Standard Education Society. Respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the directors and sole stockholders of the respondent Standard Encyclopedia Corporation. Respondent Standard Education Society is now and for more than five years last past has been engaged in the compilation and/or production of sets of encyclopedias and/or reference works and/or so-called "extension service" in connection therewith and in the sale and distribution in

commerce thereof between and among the various States of the United States, causing said products, when sold, to be shipped and transported in interstate commerce from its place of business located in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. Respondent Standard Encyclopedia Corporation is now and since the date of its incorporation in, to wit, August 1929, has been engaged in the compilation and/or production of sets of encyclopedias and/or reference works and/or so-called "extension service" in connection therewith and in the sale and distribution thereof in commerce between and among various States of the United States, causing said products, when sold, to be shipped and transported in interstate commerce from its place of business located in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. Respondents, in the course and conduct of their business, are and at all times herein referred to have been in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of books, sets of encyclopedias, and/or reference works and/or so-called "extension service" in connection therewith.

PARAGRAPH Two. Respondents employed various agents, upon a commission basis, in the several States of the United States to sell their encyclopedias, reference books, and/or so-called "extension services" in connection therewith by personal solicitation. The orders received by the said agents are transmitted to the main office of respondents in Chicago, Illinois, and the said books or publications are shipped in interstate commerce from the city of Chicago to the purchasers so ordering them at their respective places of residence in the several States of the United States and in the District of Columbia. Respondents sell their said encyclopedias, reference books, and/or so-called "extension services" in connection therewith in the manner above set forth to school teachers, students, businessmen, and to the general public located in the several States of the United States, and for the purpose of selling said products in commerce between and among the various States of the United States respondents have adopted and employed and are now employing the following methods, to wit:

(*a*) Respondents distribute among prospective customers located in the several States of the United States, circular letters and other literature in which they represent that complimentary sets of the Standard Reference Work or New Standard Encyclopedia will be distributed among a few representative people before respondents institute their sales

campaign and that the cost in connection therewith is absorbed by their advertising appropriation; that a loose-leaf extension service, which keeps their encyclopedia constantly up to date is a most attractive feature of their work and that their new Standard Reference Work or New Standard Encyclopedia has recently been completed by some of the best known editors in the United States and splendid endorsements already received from some of the leading colleges and schools throughout the country; that to recipients of complimentary sets, the loose-leaf extension service will be supplied on the same terms as to regular subscribers. Respondents request the recipients of the aforesaid circulars or literature to treat same as personal and confidential and emphasize that they are authorized to present said recipient with a complete, full-bound set of this new work, in an artcraft de luxe edition with the compliments of the publishers.

(*b*) Respondents represent, through their salesmen or agents and by other means, that they will present free of charge to prospective customers a certain number of their reference books or sets of encyclopedias entitled "The Standard Reference Work", or "New Standard Encyclopedia" upon the condition that the said prospective customers subscribe to and purchase the so-called "extension service" designated "The Standard Loose-Leaf Extension Service" for a specified sum of money and for a specified period of time, the said sum of money being represented to be a special price offered for advertising purposes to a limited number of persons residing in a given community, and/or as being a price much lower than the price regularly charged for their books or sets of encyclopedias and/or loose-leaf extension service, when in truth and in fact said sum of money, represented as aforesaid, was and is the usual and customary price to all persons who can be induced to purchase said reference books, sets of encyclopedias, and/or loose-leaf extension service, and when in truth and in fact it is not the practice of said respondents to confine their aforesaid representations and offers or those of their salesmen or agents to a certain number of persons, solicited or otherwise, in each community who had been designated to receive the said books or sets of encyclopedias or any form of service free, but it was and is the practice, intention, and desire of respondents to dispose of the aforesaid products to the general public in each community and at the same price or figure, and when in truth and in fact, the respondents had not and do not set aside a certain number of their books or encyclopedias for advertising purposes to be given free as indicated by the representations of respondents or by other means.

(*c*) Respondents represent and have represented through their salesmen or agents and through circulars and by other means that they will give away free, as a premium, certain books or sets of books written by well-known authors, to subscribers of their sets of encyclopedias and/or loose-leaf extension service, when in truth and in fact the said books or sets of books so offered as free gifts or premiums for the subscriptions so obtained were not given away but the costs thereof was included in the price asked for the said subscriptions.

(*d*) Respondents have made and are making use of alleged testimonials or recommendations of certain prominent educators and others known to prospective customers and have represented and do represent that respondents' publications have been authorized and approved or endorsed by numerous State boards of education, when in truth and in fact the said alleged testimonials or recommendations or endorsements were not authorized or made by and/or used with the knowledge and approval of said educators, or approved by the various State boards of education as alleged.

(*e*) Respondents have represented and represent through their salesmen or agents, by the use of prospectuses and otherwise, that their said reference books or sets of encyclopedias were recently completed and had been copyrighted in 1926, when in truth and in fact such was not the case.

(*f*) Respondents have caused and do cause their said sets of encyclopedias or reference works and/or their loose-leaf or revision services to be advertised and sold in interstate commerce under the various titles "Standard Reference Work", published by Standard Education Society, and "National Encyclopedia, published by National Encyclopedia Company", when in truth and in fact the said encyclopedia and/or the said loose-leaf extension service, though advertised and sold under the different titles aforesaid, were the same or substantially the same works or products.

(*g*) Respondents have caused and do cause to be advertised and distributed through their salesmen or agents and otherwise, among prospective customers or students located in various States of the United States, a contract in connection with their so-called "Standard Extension University", the said contract having printed on its top border in red ink the statement "Special Introductory Enrollment this is a life-time scholarship", when in truth and in fact the said contract, its quoted enrollment fee and other contents were in no wise "Special", but were the same as have always been used by the respondents in soliciting the sale of and selling their courses to customers or students or prospective customers or students located in various States of the United States,

PARAGRAPH THREE. Respondents have represented and do represent to the prospective purchasers of their encyclopedias or books of reference and/or their so-called "loose-leaf extension service" that the customary and regular prices of said works or products to the public are certain specified prices, which said specified prices are fictitious and grossly exaggerated, and which prices far exceed the usual and customary prices at which respondents actually offer or expect to sell the same, and greatly in excess of the real value of same.

PARAGRAPH FOUR. The acts and things above alleged to have been done by respondents are to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Wherefore, the premises considered, the Federal Trade Commission on this 4th day of December, A. D. 1929, now here issues this its supplemental complaint against said respondents.

NOTICE

Notice is hereby given you, the respondents above named, respondents herein, that the 3rd day of January, A. D. 1930, at 2:00 o'clock in the afternoon, is hereby fixed as the time and the offices of the Federal Trade Commission, in the city of Washington, D. C., as the place when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in this complaint.

You are notified and required within 30 days from service of the complaint, unless such time be extended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answer and failure to answer (rule III) provide as follows:

(1) In case respondents shall desire to contest the proceedings, such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondents shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondents are without knowledge, in which case respondents shall so state, such statements operating as a denial. Any allegations of the complaint not specifically denied in the answer unless re-

spondents shall state in the answer that respondents are without knowledge shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondents desire to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondents refrain from contesting the proceeding or that respondents consent that the Commission may make, enter, and serve upon respondents an order to cease and desist from the violation of the law alleged in the complaint or that respondents admit all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondents to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In witness whereof the Federal Trade Commission has caused this complaint to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 4th day of December, A. D. 1929.

By the Commission:

[SEAL] OTIS B. JOHNSON, *Secretary.*

## ANSWER OF STANDARD ENCYCLOPEDIA CORPORATION TO SUPPLEMENTAL COMPLAINT

(Filed January 6, 1930)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

(Docket 1574)

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY, AND AS PRESIDENT AND DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION, AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY; AND A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION, AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

### ANSWER OF STANDARD ENCYCLOPEDIA CORPORATION TO SUPPLEMENTAL COMPLAINT

Now comes the Standard Encyclopedia Corporation, respondent herein, and for answer unto the supplemental complaint, answering says:

This respondent admits that it is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Chicago and State of Illinois, and admits that it is now engaged in the compilation and production and sale of encyclopedias, reference works, and loose-leaf extension service in connection therewith in interstate commerce throughout the United States, as alleged.

PARAGRAPH ONE. This respondent denies that the Federal Trade Commission is acting in the public interest, pursuant to said act of Congress as alleged in said complaint and denies that this respondent is using unfair methods of competition in interstate commerce in violation of section 5 of said act of Congress.

PARAGRAPH TWO. This respondent herewith adopts the answer of the Standard Education Society heretofore filed herein as its answer to all of the allegations of paragraph two and each of the subparagraphs (*a*) to (*g*), inclusive, of the supplemental complaint.

PARAGRAPH THREE. This respondent herewith adopts the answer of the Standard Education Society heretofore filed herein as its answer to the allegations contained in paragraph three of the supplemental complaint.

PARAGRAPH FOUR. This respondent herewith adopts the answer of the Standard Education Society heretofore filed herein as its answer to the allegations contained in paragraph four of the supplemental complaint.

And now having answered the complaint herein, this respondent prays that same may be dismissed.

STANDARD ENCYCLOPEDIA CORPORATION,
By H. M. STANFORD, *President.*

LANGWORTHY, STEVENS, MCKEAG & MCCORMACK,
*Attorneys for Respondent.*

# ANSWER OF W. H. WARD AND A. J. GREENER TO SUPPLEMENTAL COMPLAINT

Filed January 6, 1930

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION, STANDARD ENCYCLOPEDIA CORPORATION, H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY AND AS PRESIDENT AND DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY; AND A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

JOINT AND SEVERAL ANSWER OF W. H. WARD, INDIVIDUALLY AND AS DIRECTOR OF THE STANDARD ENCYCLOPEDIA CORPORATION AND AS SECRETARY AND DIRECTOR OF THE STANDARD EDUCATION SOCIETY, AND A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF THE STANDARD ENCYCLOPEDIA CORPORATION AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

Now come W. H. Ward, individually and as director of the Standard Encyclopedia Corporation and as secretary and director of the Standard Education Society, and A. J. Greener, individually and as director of the Standard Encyclopedia Corporation and as director of the Standard Education Society, and for answer unto the supplemental complaint filed herein, or to so much thereof as they and each of them are advised is material for them to answer, answering say:

They deny that the Federal Trade Commission is acting in the public interest pursuant to the provisions of an act of Congress, as alleged; and deny that they, or either of them,

individually or as officers or directors of the Standard Encyclopedia Corporation and Standard Education Society, are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act of Congress.

PARAGRAPH ONE. Respondent W. H. Ward admits that he is a director of the Standard Encyclopedia Corporation and secretary and director of the Standard Education Society; and Respondent A. J. Greener admits that he is a director of the Standard Encyclopedia Corporation and a director of the Standard Education Society; but deny that they, or either of them, individually or as directors and officers of either of the aforesaid corporations, are now, or have at any time, been engaged in the compilation and/or production of encyclopedias and/or reference works and/or so-called "extension service" in connection therewith, in interstate commerce, as alleged; and deny that they, or either of them, individually or as directors and officers aforesaid, are in competition with other corporations, individuals, firms, or partnerships engaged in the sale of similar articles.

PARAGRAPH TWO. These respondents, individually and as directors and officers aforesaid, deny that they employed various agents in any form or at any place to sell encyclopedias, either by agents or by themselves, as alleged; and deny that they, or either of them, individually, or as directors and officers aforesaid are engaged in commerce between and among the various States of the United States; and deny that they, or either of them, individually, or as directors or officers of the corporations aforesaid, have adopted, employed, or are now using any or either of the methods set forth in the supplemental complaint in paragraph two, subparagraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), or (*g*), as fully as though they, or either of them, had specifically denied each and every allegation thereof.

PARAGRAPH THREE. These respondents deny that they, or either of them, have represented, or do represent, or make any representations of any kind, to prospective purchasers of encyclopedias or loose leaf extension service for customary and regular prices thereof or any prices whatsoever.

PARAGRAPH FOUR. These respondents, as aforesaid, deny that they, or either of them, are engaged in interstate commerce; and deny that they, or either of them, individually, or as directors or officers, have done or performed, or failed to perform, any act, as alleged in the supplemental complaint, to the prejudice of the public, or any other person, firm or corporation, which constitutes an unfair method of competition in violation of section 5 of said act of Congress.

Wherefore these respondents, individually and as directors and officers of the corporations aforesaid, request that said supplemental complaint be dismissed as to each of them, individually, and as directors and officers of said corporations.

W. H. WARD,
*Individually, and as Director of the Standard Encyclopedia Corporation, and as Secretary and Director of the Standard Education Society.*

A. J. GREENER,
*Individually, and as Director of the Standard Encyclopedia Corporation, and as Director of the Standard Education Society.*

LANGWORTHY, STEVENS, MCKEAG & MCCORNACK,
*Attorneys for Respondents.*

# AMENDED ANSWER OF A. J. GREENER TO SUPPLEMENTAL COMPLAINT

Filed January 23, 1930

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY AND AS PRESIDENT AND DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY; AND A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

AMENDED ANSWER OF A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF THE STANDARD ENCYCLOPEDIA CORPORATION AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

Leave being had and obtained, now comes A. J. Greener, made respondent herein, individually and as director of the Standard Encyclopedia Corporation and as director of the Standard Education Society, and for amended answer unto the supplemental complaint filed herein, or to so much thereof as he is advised is material for him to answer, answering says:

He denies that the Federal Trade Commission is acting in the public interest pursuant to the provisions of an act of Congress, as alleged; and denies that he, individually or as director of the Standard Encyclopedia Corporation and Standard Education Society, is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act of Congress.

PARAGRAPH ONE. A. J. Greener admits that he was a director of the Standard Encyclopedia Corporation at the

time of its original incorporation, but resigned as such director within a very short time thereafter and has not since then and is not now a director of said Standard Encyclopedia Corporation, but denies that he was at any time a director of the Standard Education Society and denies that he, individually or as director of either of the aforesaid corporations, is now, or has at any time, been engaged in the compilation and/or production of encyclopedias and/or reference works and/or so-called "extension service" in connection therewith in interstate commerce, as alleged; and denies that he, individually or as director aforesaid, is in competition with other corporations, individuals, firms, or partnerships engaged in the sale of similar articles.

PARAGRAPH TWO. This respondent named herein, individually, and as director aforesaid, denies that he employed various agents in any form or at any place to sell encyclopedias, either by agents or by himself, as alleged; and denies that he, individually, or as director aforesaid, is engaged in commerce between and among the various States of the United States; and denies that he, individually, or as director of the corporations aforesaid, has adopted, employed, or is now using any or either of the methods set forth in the supplemental complaint in paragraph two, subparagraphs (a), (b), (c), (d), (e), (f), or (g), as fully as though he had specifically denied each and every allegation thereof.

PAGAGRAPH THREE. This respondent denies that he has represented, or does represent, or makes any representations of any kind, to prospective purchasers of encyclopedias or loose-leaf extension service for customary and regular prices thereof or any prices whatsoever.

PARAGRAPH FOUR. This respondent, as aforesaid, denies that he is engaged in interstate commerce; and denies that he, individually, or as director of the corporations aforesaid, or in any capacity, has done or performed, or failed to perform, any act, as alleged in the supplemental complaint, to the prejudice of the public, or any other person, firm, or corporation, which constitutes an unfair method of competition in violation of section 5 of said act of Congress.

Wherefore this respondent named herein, individually, and as director of the corporations aforesaid, requests that said supplemental complaint be dismissed as to him, individually, and as director of said corporations.

(Signed) A. J. GREENER,
*Named herein, individually and as Director of the Standard Encyclopedia Corporation and as Director of the Standard Education Society.*

(Signed) LANGWORTHY, STEVENS, MCKEAG & MCCORNACK,
*Attorneys for Respondent.*

## STIPULATION RE TESTIMONY

(January 17, 1930)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, ET AL

STIPULATION

Whereas on, to wit, February 25, 1929, the Federal Trade Commission caused a complaint to issue, charging respondents, Standard Education Society and H. M. Stanford, individually and as president of Standard Education Society, with certain violations of section 5 of the Federal Trade Commission Act, to which complaint answers were filed by the respondents on, to wit, March 28, 1929; and

Whereas subsequent to the filing of the answers herein, testimony was received in support of the allegations contained in the complaint; and

Whereas on, to wit, December 4, 1929, the Federal Trade Commission caused a supplemental complaint to issue, adding as parties respondent herein Standard Encyclopedia Corporation, a corporation; H. M. Stanford as director of respondent Standard Education Society, and as president and director of respondent Standard Encyclopedia Corporation; W. H. Ward, individually and as secretary and director of respondent Standard Education Society, and as director of respondent Standard Encyclopedia Corporation; and A. J. Greener, individually and as director of respondent Standard Education Society and as director of respondent Standard Encyclopedia Corporation; and

Whereas the parties herein being desirous of avoiding the expense and delay necessary and incidental to the reception again of testimony already comprising the record herein as prior to the issuance of the supplemental complaint.

It is hereby stipulated and agreed by and between Robt. E. Healy, Chief Counsel for the Federal Trade Commission

(subject to the approval of the Federal Trade Commission), and respondents Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener that said respondents Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener hereby agree that such testimony as was taken herein prior to the issuance of the supplemental complaint herein which is relevant and material to the issues raised against said respondents herein shall be considered by the Commission in determining the issues herein raised under the complaints and answers herein, and said respondents herein, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener hereby expressly waive their right to have been present at the taking of such testimony, and to the privilege of cross examining such witnesses as gave testimony on behalf of the Commission.

It is further stipulated and agreed by and between the said parties hereto that upon acceptance of this stipulation the Commission will rest its case in chief.

Witness our hands this 17th day of January 1930.

(S) STANDARD ENCYCLOPEDIA CORPORATION.
Standard Encyclopedia Corporation.
(S) H. M. STANFORD.
H. M. Stanford.
(S) W. H. WARD.
W. H. Ward.
(S) A. J. GREENER.
A. J. Greener.

(S) LANGWORTHY, STEVENS, MCKEAG & MCCORNACK,
By *Langworthy, Stevens, McKeag & McCornack,*
*Their Attorneys.*

(S) ROBT. E. HEALY.
Robt. E. Healy,
*Chief Counsel Federal Trade Commission.*

Approved:

OTIS B. JOHNSON,
*Secretary Federal Trade Commission.*

# MOTION OF RESPONDENTS TO STRIKE CERTAIN TESTIMONY

BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION, AND H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

MOTION OF RESPONDENTS TO STRIKE CERTAIN TESTIMONY

Now come all the respondents herein, jointly and severally, and in accordance with the motion of the respondents made at the hearing on March 6, 1930, do hereby specify and state that the following testimony, offered in the record, should be stricken therefrom, for the reason that same is irrelevant and incompetent, being based on conclusions, feelings, belief, or thought, and not a statement of any fact, said testimony being as follows:

WITNESS: LUCILLE COWLES

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3 Q. He led you to believe they had been off that year, or a year before, or ten years before—what would you say as to that?

A. As late as a year before.

4 Q. And, relying upon their recommendations in part, you were induced to agree to pay the $69.50 for the extension services?

A. Yes.

5 Q. Prior to the time that the books were sent to you did you see anything that would lead you to believe there had been a misrepresentation?

A. I saw a clipping from the Rural New Yorker concerning the action of the Federal Trade Commission.

Q. Did you afterwards learn that the regular price of the books, for instance, or any other thing pertaining to the regular price of the books, that would lead you to believe that $69.50 was the regular price for the whole work?

A. Yes.

WITNESS: MARIAN KINGSLEY

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10 Q. Was the loose-leaf service to be the most valuable part of the work?

A. It was set forth that way—it was to take the place of a magazine.

Q. Of what magazine?

A. The Literary Digest.

Q. And the agent represented to you that the extension service of the Standard Education Society was to take the place of the Literary Digest in your home?

A. Yes.

11 Q. What did the agent represent to you as to the approximate age of the books that were to be given to you free?

A. They were up to date and modern.

Q. Did he give you the impression that they were a year old, or 2 years old, 3 years old, 5 years old, or more than that, or less than a year old?

A. Well, they were recent books.

Q. Your own idea as to that would be that they were approximately of what date?

A. Two years at the outside.

Q. Would you have purchased these books, Miss Kingsley, had you known it to be a fact that the actual price of the books, extension service, outlines, and everything that was included, was actually $69.50, and was always $69.50, and was not a special price to you for 2 weeks only?

A. I think not.

WITNESS: FLORENCE SHINER

13 Q. Did the agent or agents make any representations as to the ordinary or regular price of this work?

A. Yes, sir; I saw a paper that he had, telling that the next year the books—they weren't selling these books at at the present time to anyone but teachers, and at the end of a year they would be selling to anyone for a price of, I believe, $125, but I am not sure whether it was $110 or $125.

Q. At any rate, it was over $100?

A. Yes.

14 Q. If you had known, Miss Shiner, that the regular price of this work was actually $69.50 and that that included in every case the first ten volumes and the

maps and outline service that was furnished in addition to the extension service, would you have purchased this work? In other words, did the fact that this was a free offer——

A. That probably influenced me to a large extent.

WITNESS: ALICE MCAULIFF

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17 Q. Were any representations made as to the age of these first ten volumes that were to be given to you free?

A. Yes; they were modern.

Q. Would you say that they were one year old or two years old or five years old—would you say the impression you got was which of these number of years, if any?

A. Well, he represented as being up to date and I did not form any conclusion.

18 Q. But the price at which you were to get them was——

A. I believe almost half.

Q. Almost half of the regular price?

A. Yes.

19 Q. If you had known that this was not an advertising scheme but a selling scheme and that the books were to be generally sold at the price at which they were offered to you and that the price at which they were offered to you covered the whole work, would you then have purchased the books?

A. I think that was what influenced me, mostly.

Q. The fact that they were being given to you in an advertising scheme?

A. Yes.

Q. Then what would your answer be to the other question—would you then have purchased the books?

A. No; I do not think so.

20 Q. Do you recall the reason which prompted you to write and tell them that you did not want the books?

A. Yes; I had found out that they were misrepresented.

Q. And you cannot recall whether you told them that they were misrepresented?

A. I cannot remember whether I told them that, or not.

WITNESS: ELWOOD B. WHITESELL

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26 Q. What was their representation? What was their story at that time, Dr. Whitesell?

A. They, at the time—in fact, there was just one agent was carrying this set of books—one of the sample books which they are selling, supposed to be the latest in reference works, which he was to sell to me for the sum of $69.50 and some cents—a reduction from the regular price which he stated at that time to be $120.00 for the complete works. This included a volume with a service covering a period of ten years, from 1927 to 1937.

Q. What kind of a service was that to be?

A. An extension service—a loose-leaf extension service, and at the time of receiving the books I also received the covers which were to be used for placing the loose-leaf sections in as they came to me. At the time he represented to me I was to receive these books and this extension service at the price of the contract, with a verbal agreement that in the course of a month or six weeks or probably two months they would come back to Towanda to work Towanda and the outlying sections selling this set of books, and when they returned I was to deliver to him a letter of recommendation as a
27 business for him to use in the selling of this set of books. At the time that I was to deliver the letter on his return I was to receive a receipt in full for these volumes and also the extension service. He has not returned to this date.

28 Q. If you had known that the banker in Shickshinny did not make the purchase, and if you had known that the regular price of the books was $69.50, and if you had known that it was not the intention of the agent to relieve you of liability on your contract, would you have purchased the books?

A. I do not think so.

WITNESS: EULENA FRISBEE

41 Q. And did he give you the approximate price?

A. I think it was around $200.00, he said they were.

Q. And you gained the idea that the encyclopedia and the loose-leaf service together sold for over $200.00?

A. Yes.

Q. And how much was he to sell the loose-leaf service to you for?

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A. $69.50.

42 Q. Did he give you the impression that the extension service would take the place of daily newspapers?

A. Yes; he did.

Q. What did you understand that you were signing?

A. When he told me to sign, I supposed I was only

43 supposed to pay $6.95 every year. But after I signed my name he told me to sign for every month.

Q. You supposed this was $6.95 a year. How did you get that impression?

A. $6.95 a year for ten years, making $69.50 for the loose-leaf service.

Q. Would you have purchased this work had you known that the ordinary price at which this entire work, including the extension service, was ordinarily sold to anybody who could be induced to buy?

A. No; I would not.

Q. For $69.50.

A. No.

WITNESS: RUTH ALLENE BAILEY

49 Q. Then the impression you gained from what he said was that the books would be one year or two or five years old?

A. About a year old.

Q. Miss Bailey, would you have purchased the books

50 had you known that the usual and ordinary price of the books and the extension service to anyone who could be induced to pay was $69.50?

A. I would not.

WITNESS: MARY GAMBEE

55 Q. Did you think or did you understand that they usually sold for more or less than $69.50?

A. More.

Q. A little more or much more?

A. Much more.

Q. Then you understood that this was an exceptional offer?

A. Yes.

Q. Did the agent in this case make any representations as to the age of the encyclopedia?

A. I understood it was new.

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59 Q. If the agent in this case had offered to sell you the books and the loose-leaf extension service for $69.50, payable five dollars a month, would you have accepted his proposition?

A. No.

WITNESS: OPAL BRYSON

62 A. From what he said I thought that we had to take the loose-leaf extension service.

63 Q. Did you understand that the books, the encyclopedias, were usually given away in connection with the loose-leaf extension service?

A. No; I think he told me they were usually sold for $150 or $200; but special teachers had been recommended to him, and I was one of them, and that he was giving those teachers those books free.

Q. Any representations made to you as to the approximate age of this work?

A. Well, he said they were just new books; I imagine a year or two old.

64 Q. If the agent had offered to sell you this set of books with the loose-leaf extension service for the total amount of $69.50, would you have accepted his proposition?

WITNESS: MARGERY HENRY

68 Q. I understood he was to give them to you?

A. The books were to be given to me; yes.

69 Q. Did you understand how much they were, approximately, sold for?

A. He gave the impression that it was some more than $69.50.

Q. Did you understand that the loose-leaf extension service usually sold in connection with the books?

A. When they were sold; yes.

Q. Were any representations made to you as to the age of that encyclopedia?

A. He gave me the impression that they were new.

70 Q. Could you say one, two, three, or five years?

A. Two or three.

Q. Two or three years?

A. Yes.

WITNESS: DOROTHY CHAFFEE

Page of Record

74 Q. Did he tell you ordinarily what, approximately, the regular price of the standard reference work was?

A. No; I don't know as he did, by I understood that they were much more.

Q. Much more than this?

A. Yes; much more.

Q. Did you understand that this advertising campaign in which this company was engaged was general at this particular time; that they were giving these books away indiscriminately to everybody in connection with the recommendation and the subscription to the extension service?

A. No. But later I understood that he went to all the schools right around there, after he left.

Q. Did the agent make any representations to you as to the age of this particular work?

A. Why, a year old or so.

Q. They were just new?

A. Yes.

Q. And your impression was that it was a year or so old?

A. I thought so.

75 Q. If this agent had offered to sell you the books and the extension service for the total sum of $69.50, would you have accepted his proposition?

A. No; I would not.

WITNESS: NORMAN F. BUTTERWORTH

80 Q. What did you understand was to be the price of them in connection with the approach to these other people?

A. That they were to be sold, as I remember, at a price of $110.00, in that neighborhood.

Q. Did you understand that the price of $110.00 included the loose-leaf extension service?

A. I don't know as I recall about that, but as I understood it I took it to include both.

Q. You understood then that you were getting a reduction of approximately forty dollars?

A. Yes.

83 Q. If the agent had not represented to you that the ordinary price of the work was approximately $110.00, but had said that the work was usually sold for $69.50,

that is, both the encyclopedia and the service, would you then have accepted it from him?

A. No; I think then that I would have seen through the scheme.

WITNESS: DELBERT K. PREST

Page of Record

88 Q. And what, Mr. Prest, was the story that this representative had?

A. He claimed he had selected a few preferred men in the business life of the west end of Syracuse to make a special offer in regard to a Standard Reference Work or Encyclopedia.

WITNESS: PETER W. CLAASSEN

97 Q. Can you recall the story approximately that this representative told you?

A. Why, yes. There were two men came to see me on the supposition that they were giving away a set of Encyclopedia of ten volumes, which was supposed, according to their story, to be worth more than one hundred dollars. I don't know the exact figures, but as I remember the total value, that the Extension Service was somewhere about $190, but I would not say that was it. I do remember that it figured to more than the cost of the Encyclopedia Britannica by far.

98 According to their story they were giving this away to a few individuals, provided they would subscribe to the loose-leaf service for the following ten years at a cost of $69.50.

WITNESS: DONALD W. CHASE

114 Q. Did you understand that included in the price which you were to pay, approximately $90.00, you were also paying for the other books that you were to receive?

A. No, sir; I did not understand that.

Q. Did you figure that you were not going to pay for the other works?

A. I figured that approximately they were giving that away.

Q. What about the Reference Works, the other books?

A. The Reference Works, those were, I believe, part of the gift transaction.

WITNESS: MARION J. BEITLER

Page of Record

119 Q. Will you tell what his story was, as nearly as you can recall it?

A. Well, he was putting out this encyclopedia. He claimed, the way I understood it, they were in some way affiliated with the Chicago public schools, and that the schools had these books, and that they were putting these out to a few select ones out over the country, so that when they started their advertising campaign through the magazines they would have some in each community to refer them to. His price was a special inducement to get a certain few to get these sets, and with the encyclopedia they were supposed to keep that up for ten years. Every six months you would get a kind of a supplement, and with that they had a choice of several other sets of books. I got the set by Booth Tarkington, and one by Mary Roberts Rinehart.

120 Q. Did the agent tell you that you were purchasing these sets of Mary Roberts Rinehart and Booth Tarkington?

A. No; they were supposed to be a gift or a special inducement to help along the sale of the encyclopedia.

Q. You said a moment ago, as you understood it, this organization was in some way affiliated with the Chicago schools. Upon what did you base that understanding?

A. Well, he said they had these sets in the Chicago public schools, or were making them up for them.

Q. You base it on what he said?

A. On what he said.

WITNESS: MAGDALENE S. WEBER

128 Q. Have you given me the name of the agent?

A. Mrs. Bell was the agent. Her name is mentioned there. The Standard Education Society acknowledged her as their agent.

WITNESS: MRS. J. R. ANKENBRANDT

147 Q. Now what happened after you received this letter in this connection?

A. A gentleman by, I think the name of Kline, called on me, and then he said he would place some books with us, and that these books would be very valuable; he would like to place them in some certain homes around the city, and selected our name as a good place

to place them, and that they would be constantly added to with magazines each year, and *as* we understood it, there would be no financial cost.

Q. How did you understand that, or from what did you get that understanding?

A. Well, the idea was sort of an advertising scheme or something, and that placing with some few people——

Q. Yes; but did you read something that gave you the idea that the books would be given to you as an advertising scheme, or did someone tell you that they would be given to you as an advertising scheme?

A. I think the man sort of made that explanation as he talked to me.

WITNESS: GEORGE HENRY GOODRICH

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176 Q. Will you tell us as near as you can recall, Mr. Goodrich, the conversation between you and Mr. Lewis?

A. He come up to my office with a selected list of about thirty people who was going to get the encyclopedia and I would get a Rinehart if I took this service, loose-leaf service, I believe, for $49.50. The sets were worth $168.00, he said.

178 Q. Were any representations made to you as to the newness of the students' reference work which was to be given to you?

A. He represented them to be up-to-date, a new edition, to be right up-to-date right along.

WITNESS: MRS. CARROLL R. HORTON

184 Q. Do you recall approximately the usual selling price as he gave it of the reference work itself?

A. Not exactly; but I believe he said something about one hundred or one hundred and twenty-five dollars. I can't be certain about that letter being before or after I returned those books. But I can look that up on the express receipt.

WITNESS: SUSAN E. GODFREY

208 Q. Were any representations made as to the newness of the Standard Reference Work itself?

A. I had the impression that it was modern and up-to-date.

Q. From what did you gain that impression, Miss Godfrey?

A. From Mr. Waller's conversation. I don't remember exactly what was said. He said, if I remember very distinctly, he talked about the fact that it was very difficult to keep an encyclopedia up-to-date; that an encyclopedia was out of date the day it came out. So
Page of Record that would give me the impression it just came out.
210 Q. Did the work usually sell for more or less than $69.50?

A. More. Quite a bit more.

WITNESS: RUTH M. GREINER

212 Q. What, as near as you can recall, was his story, Miss Greiner?

A. In the first place he approached me saying he had nothing to sell; he had something to give away, and, of course, I listened to his story. He offered this set of encyclopedias. They were to be sent free if I bought this loose-leaf extension service which would
213 extend over a period of ten years. He gave me the impression that he was offering just a few sets in the city.

Q. How did he give you that impression, Miss Greiner?

A. It was verbally told me that he was only offering one set and I have occasion of knowing he was offering them to two of my friends within a radius of a quarter of a mile.

Q. What else, as near as you can recall, did he tell you, Miss Greiner?

213 A. Well, he led me to believe that his encyclopedia was very up to date; that is, as much so as an encycloperia could be. That the loose-leaf service kept it up to date.

Q. How did he so lead you?

A. Well, he had a copy and it seemed to be very good work. It seemed to be a very good set of books, something that I might be able to use.

Q. You say he led you to believe that the work was a very good encyclopedia?

A. Yes.

Q. Was that from something that he showed you
214 or from something he said to you, or just from his general attitude?

A. Well, I would say both.

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216 Q. Did the agent tell you that the Standard Reference Work was usually given away in connection with the sale of the extension service?

A. He did not. He left to believe that very few were given away.

Q. What representations did he make as to the usual price of this work, if any?

A. I don't remember the exact amount. I remember
217 it was very much higher than the price I was getting.

WITNESS: AUSTIN F. ROGERS

464 Q. Do you recall whether or not any representation was made that the price to the public was greater than that?

A. Yes; I think he mentioned that.

465 Q. From his conversation did you get the impression that you were receiving a special price as distinguished from the price to the public?

A. Yes; I certainly did, and the contract is marked in the corner "Publicity."

Q. Did you understand from his conversation that the offer made to you was made to a limited number of persons?

A. Yes.

466 Q. What did you find?

A. They were very unsatisfactory.

Q. In what way?

A. Inaccurate and a good many important things are omitted.

Q. What do you find as to the writers of the articles?

A. Well, they are not articles—the articles are not signed. I find they are not written by experts.

469 Q. For what reason?

A. I found that the books were not satisfactory, and because the books were misrepresented, on account of the misrepresentations made to me by the agent.

WITNESS: BUFORD O. BROWN

479 Q. Was any representation made as to the predecessor of the Standard Education Society in issuing this Reference Work?

A. Yes; he represented—I couldn't be certain that he stated in definite terms that the Standard Education

Society is a successor to Dodd, Mead & Company, but he left the impression very definitely that the Standard Reference Work was a successor to the New International Encyclopedia.

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Q. Were any representations made as to the character of the writers of the articles in this Reference Work?

A. Yes; that they would be authorities in their representative respective fields. I questioned him on that point rather carefully, because I have always been partial to the New International Encyclopedia and I was impressed with the suggestion that this book was a successor, and in fact, to the New International.

Q. Have you since ascertained whether that is a fact?

A. That it is a successor?

Q. Yes.

A. No; I have not. My impression is that it is not, but it is merely an impression.

And now also come the respondents and each of them jointly and severally move to strike from the record all of the evidence and exhibits offered on behalf of the petitioner concerning Charles E. Knapp, or any representative of said Charles E. Knapp, and also all the evidence and exhibits offered pertaining to the alleged San Francisco Office of the Standard Education Society, because each of the aforesaid parties is an independent dealer, and these respondents nor any one of them have any control nor can they be legally charged with any or either of the acts of either of said parties or their respective representatives.

_____, _____,

*Attorneys for Respondents.*

# TRIAL EXAMINER'S RULING ON RESPONDENTS' MOTION TO STRIKE CERTAIN TESTIMONY

(September 22, 1930)

BEFORE THE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

RULING ON RESPONDENTS' MOTION TO STRIKE CERTAIN TESTIMONY

And the respondents in this cause, having jointly and severally, and in accordance with the motion of the respondents, made at a hearing in Chicago on March 6, 1930, specified and stated in detail the testimony in this record to which their motion to strike should apply, and having stated their reasons for said motion to strike, and the trial examiner having duly considered the motion and having carefully examined the evidence, and being of the opinion that as to certain parts of the testimony the motion to strike is well taken, doth hereby grant the motion to strike such certain parts as are indicated hereinafter more specifically on the margin of the motion to strike, and doth deny said motion to strike as to such other parts of the testimony covered by said motion as are hereinafter more specifically noted on the margin of the motion to strike.

Now, therefore, be it ordered that such portions of the testimony as are indicated as being denied on the margin of the motion to strike be, and the same hereby are denied, and such portions of the testimony as are indicated as being granted on the margin of the motion to strike be, and the same hereby are, stricken.

EDWARD M. AVERILL,
*Trial Examiner.*

WASHINGTON, D. C.,
*September 22, 1930.*

BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION, AND H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

MOTION OF RESPONDENTS TO STRIKE CERTAIN TESTIMONY

Now come all the respondents herein, jointly and severally, and in accordance with the motion of the respondents made at the hearing on March 6, 1930, do hereby specify and state that the following testimony offered in the record should be stricken therefrom for the reason that same is irrelevant and incompetent, being based on conclusions, feelings, belief, or thought, and not a statement of any fact, said testimony being as follows:

WITNESS: LUCILLE COWLES

MOTION TO STRIKE GRANTED

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3 Q. He led you to believe they had been off that year, or a year before, or ten years before—what would you say as to that?

A. As late as a year before.

4 Q. And, relying upon their recommendations in part, you were induced to agree to pay the $69.50 for the extension services?

A. Yes.

5 Q. Prior to the time that the books were sent to you did you see anything that would lead you to believe there had been a misrepresentation?

A. I saw a clipping from the Rural New Yorker concerning the action of the Federal Trade Commission.

Q. Did you afterwards learn that the regular price of the books, for instance, or any other thing pertaining to the regular price of the books, that would lead you to believe that $69.50 was the regular price for the whole work?

A. Yes.

WITNESS: MARIAN KINGSLEY

MOTION TO STRIKE DENIED

10 Q. Was the loose-leaf service to be the most valuable part of the work?

A. It was set forth that way—it was to take the place of a magazine.

Q. Of what magazine?

A. The Literary Digest.

Q. And the agent represented to you that the extension service of the Standard Education Society was to take the place of the Literary Digest in your home?

A. Yes.

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11 Q. What did the agent represent to you as to the approximate age of the books that were to be given to you free?

A. They were up to date and modern.

MOTION TO STRIKE GRANTED

Q. Did he give you the impression that they were a year old, or two years old, three years old, five years old, or more than that, or less than a year old?

A. Well, they were recent books.

Q. Your own idea as to that would be that they were approximately of what date?

A. Two years at the outside.

Q. Would you have purchased these books, Miss Kingsley, had you known it to be a fact that the actual price of the books, extension service, outlines, and everything that was included was actually $69.50 and was always $69.50 and was not a special price to you for two weeks only?

A. I think not.

WITNESS FLORENCE SHINER

MOTION TO STRIKE GRANTED

13 Q. Did the agent or agents make any representations as to the ordinary or regular price of this work?

A. Yes, sir; I saw a paper that he had, telling that the next year the books—they weren't selling these books at the present time to anyone but teachers, and at the end of a year they would be selling to anyone for a price of, I believe, $125, but I am not sure whether it was $110 or $125.00.

Q. At any rate, it was over $100.00?

A. Yes.

14 Q. If you had known, Miss Shiner, that the regular price of this work was actually $69.50 and that that included in every case the first ten volumes and the maps and outline service that was furnished in addition to the extension service, would you have purchased this work? In other words, did the fact that this was a free offer——

A. That probably influenced me to a large extent.

WITNESS: ALICE MCAULIFF

MOTION TO STRIKE DENIED

Page of Record

17 Q. Were any representations made as to the age of these first ten volumes that were to be given to you free?

A. Yes; they were modern.

MOTION TO STRIKE GRANTED

Q. Would you say that they were one year old or two years old or five years old—would you say the impression you got was which of these number of years, if any?

A. Well, he represented as being up to date, and I did not form any conclusion.

18 Q. But the price at which you were to get them was——

A. I believe almost half.

Q. Almost half of the regular price?

A. Yes.

19 Q. If you had known that this was not an advertising scheme but a selling scheme and that the books were to be generally sold at the price at which they were offered to you and that the price at which they were offered to you covered the whole work, would you then have purchased the books?

A. I think that was what influenced me mostly.

Q. The fact that they were being given to you in an advertising scheme?

A. Yes.

Q. Then what would your answer be to the other question—would you then have purchased the books?

A. No; I do not think so.

20 Q. Do you recall the reason which prompted you to write and tell them that you did not want the books?

A. Yes; I had found out that they were misrepresented.

Q. And you cannot recall whether you told them that they were misrepresented?

A. I cannot remember whether I told them that or not.

WITNESS: ELWOOD B. WHITESELL

MOTION TO STRIKE DENIED

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26 Q. What was their representations? What was their story at that time, Dr. Whitesell?

A. They, at the time—in fact, there was just one agent was carrying this set of books—one of the sample books which they are selling, supposed to be the latest in reference works, which he was to sell to me for the sum of $69.50 and some cents—a reduction from the regular price, which he stated at that time to be $120.00 for the complete works. This included a volume with a service covering a period of ten years, from 1927 to 1937.

Q. What kind of a service was that to be?

A. An extension service—a loose-leaf extension service; and at the time of receiving the books I also received the covers which were to be used for placing the loose-leaf sections in as they came to me. At the time he represented to me I was to receive these books and this extension service at the price of the contract with a verbal agreement that in the course of a month or six weeks or probably two months they would come back to Towanda to work Towanda and the outlying sections selling this set of books and when they returned I was to deliver to him a letter of recommendation as a
27 business for him to use in the selling of this set of books. At the time that I was to deliver the letter on his return I was to receive a receipt in full for these volumes and also the extension service. He has not returned to this date.

MOTION TO STRIKE GRANTED

28 Q. If you had known that the banker in Shickshinny did not make the purchase, and if you had known that the regular price of the books was $69.50, and if you had known that it was not the intention of the agent to relieve you of liability on your contract, would you have purchased the books?

A. I do not think so.

WITNESS: EULENA FRISBEE

MOTION TO STRIKE DENIED

41 Q. And did he give you the approximate price?

A. I think it was around $200.00, he said they were.

MOTION TO STRIKE GRANTED

Q. And you gained the idea that the encyclopedia and the loose-leaf service together sold for over $200.00?
A. Yes.

MOTION TO STRIKE DENIED

Q. And how much was he to sell the loose-leaf service to you for?
A. $69.50.

MOTION TO STRIKE GRANTED

Page of Record

42 Q. Did he give you the impression that the extension service would take the place of daily newspapers?
A. Yes; he did.
Q. What did you understand that you were signing?
A. When he told me to sign, I supposed I was only
43 supposed to pay $6.95 every year. But after I signed my name he told me to sign for every month.
Q. You supposed this was $6.95 a year. How did you get that impression?
A. $6.95 a year for ten years, making $69.50 for the loose-leaf service.
Q. Would you have purchased this work had you known that the ordinary price at which this entire work, including the extension service, was ordinarily sold to anybody who could be induced to buy?
A. No; I would not.
Q. For $69.50?
A. No.

WITNESS: RUTH ALLENE BAILEY

49 Q. Then the impression you gained from what he said was that the books would be one year or two or five years old?
A. About a year old.
Q. Miss Bailey, would you have purchased the books
50 had you known that the usual and ordinary price of the books and the extension service to anyone who could be induced to pay was $69.50?
A. I would not.

WITNESS: MARY GAMBEE

MOTION TO STRIKE GRANTED

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55 Q. Did you think or did you understand that they usually sold for more or less than $69.50?

A. More.

Q. A little more or much more?

A. Much more.

Q. Then you understood that this was an exceptional offer?

A. Yes.

Q. Did the agent in this case make any representations as to the age of the encyclopedia?

A. I understood it was new.

59 Q. If the agent in this case had offered to sell you the books and the loose-leaf extension service for $69.50, payable five dollars a month, would you have accepted his proposition?

A. No.

WITNESS: OPAL BRYSON

MOTION TO STRIKE DENIED

62 A. From what he said, I thought that we had to take the loose-leaf extension service.

63 Q. Did you understand that the books, the encyclopedias, were usually given away in connection with the loose-leaf extension service?

A. No; I think he told me they were usually sold for $150, or $200, but special teachers had been recommended *to him and I was one of them*, and that he was giving those teachers those books free.

Q. Any representations made to you as to the approximate age of this work?

A. Well, he said they were just new books; I imagine a year or two old.

MOTION TO STRIKE GRANTED

64 Q. If the agent had offered to sell you this set of books with the loose-leaf extension service for the total amount of $69.50, would you have accepted his proposition?

WITNESS: MARGARY HENRY

MOTION TO STRIKE GRANTED

Page of Record

68 Q. I understood he was to give them to you?
A. The books were to be given to me; yes.
69 Q. Did you understand how much they were approximately sold for?
A. He gave the impression that it was some more than $69.50.
Q. Did you understand that the loose-leaf extension service usually sold in connection with the books?
A. When they were sold; yes.
Q. Were any representations made to you as to the age of that encyclopedia?
A. He gave me the impression that they were new.
70 Q. Could you say one, two, three, or five years?
A. Two or three.
Q. Two or three years?
A. Yes.

WITNESS: DOROTHY CHAFFEE

MOTION TO STRIKE GRANTED

74 Q. Did he tell you ordinarily what approximately the regular price of the Standard Reference Work was?
A. No; I don't know as he did, but I understood that they were much more.
Q. Much more than this?
A. Yes; much more.
Q. Did you understand that this advertising campaign in which this company was engaged was general at this particular time, that they were giving these books away indiscriminately to everybody in connection with the recommendation and the subscription to the extension service?
A. No; but later I understood that he went to all the schools right around there, after he left.

MOTION TO STRIKE DENIED

Q. Did the agent make any representations to you as to the age of this particular work?
A. Why, a year old or so.
Q. They were just new?

A. Yes.

Q. And your impression was that it was a year or so old?

A. I thought so.

MOTION TO STRIKE GRANTED

Page of Record

75 Q. If this agent had offered to sell you the books and the extension service for the total sum of $69.50, would you have accepted his proposition?

A. No; I would not.

WITNESS: NORMAN F. BUTTERWORTH

MOTION TO STRIKE GRANTED

80 Q. What did you understand was to be the price of them in connection with the approach to these other people?

A. That they were to be sold, as I remember, at a price of $110.00, in that neighborhood.

Q. Did you understand that the price of $110.00 included the loose-leaf extension service?

A. I don't know as I recall about that, but as I understood it, I took it to include both.

Q. You understood then that you were getting a reduction of approximately forty dollars?

A. Yes.

83 Q. If the agent had not represented to you that the ordinary price of the work was approximately $110.00, but had said that the work was usually sold for $69.50, that is, both the encyclopedia and the service, would you then have accepted it from him?

A. No; I think then that I would have seen through the scheme.

WITNESS: DELBERT K. PREST

MOTION TO STRIKE DENIED

88 Q. And what, Mr. Prest, was the story that this representative had?

A. He claimed he had selected a few preferred men in the business life of the west end of Syracuse to make a special offer in regard to a standard reference work or encyclopedia.

WITNESS: PETER W. CLAASSEN

MOTION TO STRIKE GRANTED

Page of Record

97 Q. Can you recall the story, approximately, that this representative told you?

A. Why, yes. There were two men came to see me on the supposition that they were giving away a set of encyclopedias of ten volumes, which was supposed, according to their story, to be worth more than one hundred dollars. I don't know the exact figures, but, as I remember the total value, that the extension service was somewhere about $190, but I would not say that was it. I do remember that it figured to more than the cost of the Encyclopedia Britannica by far.

98 According to their story, they were giving this away to a few individuals, provided they would subscribe to the loose-leaf service for the following ten years at a cost of $69.50.

WITNESS: DONALD W. CHASE

MOTION TO STRIKE GRANTED

114 Q. Did you understand that included in the price which you were to pay, approximately $90.00, you were also paying for the other books that you were to receive?

A. No, sir; I did not understand that.

Q. Did you figure that you were not going to pay for the other works?

A. I figured that, approximately, they were giving that away.

Q. What about the Reference Works, the other books?

A. The Reference Works, those were, I believe, part of the gift transaction.

WITNESS: MARION J. BEITLER

MOTION TO STRIKE DENIED

119 Q. Will you tell what his story was, as nearly as you can recall it?

A. Well, he was putting out this encyclopedia. He claimed, the way I understood it, they were in some way affiliated with the Chicago public schools, and that the schools had these books, and that they were putting these out to a few select ones out over the country, so

that when they started their advertising campaign through the magazines they would have some in each comunity to refer them to. His price was a special inducement to get a certain few to get these sets, and with the encyclopedia they were supposed to keep that up for ten years. Every six months you would get a kind of a supplement, and with that they had a choice of several other sets of books. I got the set by Booth Tarkington and one by Mary Roberts Rinehart.

Page of Record

120 Q. Did the agent tell you that you were purchasing these sets of Mary Roberts Rinehart and Booth Tarkington?

A. No; they were supposed to be a gift or a special inducement to help along the sale of the encyclopedia.

Q. You said a moment ago, as you understood it, this organization was in some way affiliated with the Chicago schools. Upon what did you base that understanding?

A. Well, he said they had these sets in the Chicago public schools, or were making them up for them.

Q. You base it on what he said?

A. On what he said.

WITNESS: MAGDALENE S. WEBER

MOTION TO STRIKE DENIED

128 Q. Have you given me the name of the agent?

A. Mrs. Bell was the agent. Her name is mentioned there. The Standard Education Society acknowledged her as their agent.

WITNESS: MRS. J. R. ANKENBRANDT

MOTION TO STRIKE DENIED

147 Q. Now what happened after you received this letter in this connection?

A. A gentleman by, I think the name of Kline, called on me, and then he said he would place some books with us, and that these books would be very valuable; he would like to place them in some certain homes around the city, and selected our name as a good place to place them, and that they would be constantly added to with magazines each year, and we, we understood it, there would be no financial cost.

Q. How did you understand that, or from what did you get that understanding?

A. Well, the idea was sort of an advertising scheme or something, and that placing with some few people——

Q. Yes; but did you read something that gave you the idea that the books would be given to you as an advertising scheme, or did someone tell you that they would be given to you as an advertising scheme?

A. I think the man sort of made that explanation as he talked to me.

WITNESS: GEORGE HENRY GOODRICH

MOTION TO STRIKE DENIED

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176 Q. Will you tell us as near as you can recall, Mr. Goodrich, the conversation between you and Mr. Lewis?

A. He come up to my office with a selected list of about thirty people who was going to get the Encyclopedia and I would get a Rinehart if I took this service, loose-leaf service, I believe for $49.50. The sets were worth $168.00, he said.

178 Q. Were any representations made to you as to the newness of the students' reference work which was to be given to you?

A. He represented them to be up to date, a new edition, to be right up to date, right along.

WITNESS: MRS. CARROLL R. HORTON

MOTION TO STRIKE DENIED

184 Q. Do you recall approximately the usual selling price as he gave it of the reference work itself?

A. Not exactly, but I believe he said something about one hundred or one hundred and twenty-five dollars. I can't be certain about that letter being before or after I returned those books. But I can look that up on the express receipt.

WITNESS: SUSAN E. GODFREY

MOTION TO STRIKE GRANTED

208 Q. Were any representations made as to the newness of the Standard Reference Work itself?

A. I had the impression that it was modern and up to date.

Q. From what did you gain that impression, Miss Godfrey?

A. From Mr. Waller's conversation. I don't remember exactly what was said. He said if I remember, very distinctly, he talked about the fact that it was very difficult to keep an encyclopedia up to date; that an encyclopedia was out of date the day it came out. So that would give me the impression it just came out.

MOTION TO STRIKE DENIED

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217 Q. Did the work usually sell for more or less than $69.50?

A. More. Quite a bit more.

WITNESS: RUTH M. GREINER

MOTION TO STRIKE DENIED

212 Q. What, as near as you can recall, was his story, Miss Greiner?

A. In the first place, he approached me saying he had nothing to sell; he had something to give away, and of course I listened to his story. He offered this set of encyclopedias. They were to be sent free if I bought this loose-leaf extension service, which would extend
213 over a period of ten years. He gave me the impression that he was offering just a few sets in the city.

Q. How did he give you that impression, Miss Greiner?

A. It was verbally told me that he was only offering one set and I have occasion of knowing he was offering them to two of my friends within a radius of a quarter of a mile.

Q. What else, as near as you can recall, did he tell you, Miss Greiner?

A. Well, he led me to believe that his encyclopedia was very up-to-date, that is as much so as an encyclopedia could be. That the loose-leaf service kept it up-to-date.

Q. How did he so lead you?

A. Well, he had a copy and it seemed to be very good work. It seemed to be a very good set of books, something that I might be able to use.

Q. You say he led you to believe that the work was a very good encyclopedia?

A. Yes.

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214 Q. Was that from something that he showed you or from something he said to you or just from his general attitude?

A. Well, I would say both.

216 Q. Did the agent tell you that the Standard Reference Work was usually given away in connection with the sale of the extension service?

A. He did not. He left to believe that very few were given away.

Q. What representations did he make as to the usual price of this work, if any?

A. I don't remember the exact amount. I remember
217 it was very much higher than the price I was getting.

WITNESS: AUSTIN F. ROGERS

MOTION TO STRIKE GRANTED

464 Q. Do you recall whether or not any representation was made that the price to the public was greater than that?

A. Yes; I think he mentioned that.

465 Q. From his conversation did you get the impression that you were receiving a special price as distinguished from the price to the public?

A. Yes, I certainly did; and the contract is marked in the corner "Publicity."

Q. Did you understand from his conversation that the offer made to you was made to a limited number of persons?

A. Yes.

MOTION TO STRIKE DENIED

466 Q. What did you find?

A. They were very unsatisfactory.

Q. In what way?

A. Inaccurate and a good many important things are omitted.

Q. What do you find as to the writers of the articles?

A. Well, they are not articles—the articles are not signed. I find they are not written by experts.

MOTION TO STRIKE GRANTED

469 Q. For what reason?

A. I found that the books were not satisfactory, and because the books were misrepresented, on account of the misrepresentations made to me by the agent.

WITNESS: BUFORD O. BROWN

MOTION TO STRIKE DENIED

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479 Q. Was any representation made as to the predecessor of the Standard Education Society in issuing this Reference Work?

A. Yes; he represented—I couldn't be certain that he stated in definite terms that the Standard Education Society is a successor to Dodd, Mead & Company, but he left the impression very definitely that the Standard Reference Work was a successor to the New International Encyclopedia.

Q. Were any representations made as to the character of the writers of the articles in this Reference Work?

480 A. Yes; that they would be authorities in their representative respective fields. I questioned him on that point rather carefully because I have always been partial to the New International Encyclopedia and I was impressed with the suggestion that this book was a successor, and in fact, to the New International.

Q. Have you since ascertained whether that is a fact?

A. That it is a successor?

Q. Yes.

A. No; I have not. My impression is that it is not, but it is merely an impression.

MOTION TO STRIKE DENIED

And now also come the respondents and each of them jointly and severally move to strike from the record all of the evidence and exhibits offered on behalf of the petitioner concerning Charles E. Knapp, or any representative of said Charles E. Knapp, and also all the evidence and exhibits offered pertaining to the alleged San Francisco Office of the Standard Education Society, because each of the aforesaid parties is an independent dealer, and these respondents nor any one of them have any control nor can they be legally charged with any or either of the acts of either of said parties or their respective representatives.

LANGWORTHY, STEVENS, MCKEAG & MCCORNACK,
*Attorneys for Respondents.*

## STIPULATION PERMITTING REMOVAL OF EXHIBITS

(February 11, 1931)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, ET AL.

STIPULATION PERMITTING REMOVAL OF EXHIBITS

It is hereby stipulated and agreed by and between Robert E. Healy, chief counsel for the Federal Trade Commission, and Langworthy, Stevens, McKeag & McCornack, attorneys for the respondents herein, that any documentary exhibits heretofore introduced in evidence in the above-entitled cause may be removed from the record in this cause upon the substitution therefor of photostatic copies of such documentary exhibits. Such photostatic copies as are substituted for original exhibits herein shall be to all intents and purposes, in the consideration of the record herein, the same as if they were the original exhibits actually introduced in evidence.

It is agreed that this stipulation is entered into in order that witnesses who have furnished original documents in this cause may have the return thereof.

ROBT. E. HEALY, *Chief Counsel.*
LANGWORTHY, STEVENS, MCKEAG & MCCORNACK,
*Attorneys for Respondents.*

FEBRUARY 11, 1931.

# FINDINGS AS TO THE FACTS

(December 24, 1931)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 24th day of December, A. D. 1931.

Commissioners: C. W. Hunt, chairman; William E. Humphrey, Charles H. March, Edgar A. McCulloch, Garland S. Ferguson, Jr.

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY AND AS PRESIDENT, DIRECTOR, AND INCORPORATOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY AND AS DIRECTOR AND INCORPORATOR OF STANDARD ENCYCLOPEDIA CORPORATION; AND A. J. GREENER, INDIVIDUALLY AND AS INCORPORATOR OF STANDARD ENCYCLOPEDIA CORPORATION

## FINDINGS AS TO THE FACTS AND CONCLUSION

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission on February 25, 1929, issued and served its complaint upon respondents, Standard Education Society, a corporation, and H. M. Stanford, individually and as president of respondent, Standard Education Society, charging them with unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed their answers to the said complaints, hearings were had and

evidence was introduced on behalf of the Commission before a trial examiner theretofore duly appointed.

The evidence introduced on behalf of the Commission developed the fact that in August 1929 a new corporation, the Standard Encyclopedia Corporation, had been formed by the shareholders of respondent Standard Education Society. This new corporation was engaged in selling a revision of the encyclopedias or reference works theretofore sold by respondent Standard Education Society. Respondent Standard Education Society ceased publishing and offering for sale its encyclopedias or reference works in August 1929, except that it continued to offer for sale and sell the stock then on hand.

On December 4, 1929, the Federal Trade Commission issued and served its supplemental complaint upon the respondents, Standard Education Society, a corporation; Standard Encylclopedia Corporation; H. M. Stanford, individually and as president and director of Standard Education Society and as president and director of Standard Encyclopedia Corporation; W. H. Ward, individually and as director of Standard Encyclopedia Corporation and as secretary and director of Standard Education Society; and A. J. Greener, individually and as director of Standard Encyclopedia Corporation and as director of Standard Education Society, charging them with unfair methods of competition in interstate commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed their answers to the supplemental complaint, hearings were had and testimony was heard and evidence received in support of the charges stated in the supplemental complaint and in opposition thereto before a trial examiner theretofore duly appointed and said trial examiner having filed his findings of fact herein and counsel for the respondent having filed his exceptions thereto,

Thereupon this proceeding came on for final hearing before the Commission on the brief and oral argument of the counsel for the Commission and brief of counsel for the respondent, counsel for respondent not presenting himself for oral argument, although he was duly notified thereof, and the Commission having duly considered the record and being fully advised in the premises makes this its findings as to the facts and its conclusions drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH ONE. Respondent Standard Education Society is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its

principal place of business located in the city of Chicago, State of Illinois.

PARAGRAPH TWO. Respondent Standard Encyclopedia Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, State of Illinois.

PARAGRAPH THREE. Respondent H. M. Stanford is president and general manager, a director, and owner of 250½ shares of the 536 shares of stock of the Standard Education Society outstanding, and was an incorporator of and is acting as and has held himself out as president of respondent Standard Encyclopedia Corporation.

PARAGRAPH FOUR. Respondent W. H. Ward is secretary, a director, and the owner of 250½ shares of stock in the Standard Education Society. He is also a director and was one of the incorporators of respondent Standard Encyclopedia Corporation.

PARAGRAPH FIVE. Respondent A. J. Greener is a stockholder in the Standard Education Society, holding thirty-five shares of the outstanding stock of 536 shares of said corporation, and is now and has been for many years in charge of the financial affairs of said corporation as comptroller, auditor, and manager; and the said A. J. Greener is one of the incorporators of respondent Standard Encyclopedia Corporation. Respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the managers and sole stockholders of respondent Standard Education Society and the managers and sole incorporators of respondent Standard Encyclopedia Corporation.

PARAGRAPH SIX. In 1909 there was incorporated under the name Welles Bros. Publishing Company a corporation which published and distributed a work under the name and style of Aiton's Encyclopedia. About the year 1912 the name of the work was changed to Standard Reference Work. In the year 1917 the name of the corporation, Welles Bros. Publishing Company, was changed to Standard Education Society, and under this latter name and style continued to publish, sell, and distribute in interstate commerce the books styled Standard Reference Work. The Standard Education Society shipped from the State of Illinois and from other States its encyclopedias or reference works and its so-called "extension service" in connection therewith into various States of the United States other than the State of Illinois. On or about August 1929 the respondents H. M. Stanford, W. H. Ward, and A. J. Greener caused to be incorporated as an eleemosynary institution a corporation under the name and style of Standard Encyclopedia Corporation, and having organized

this corporation, the three individual respondents proceeded to change the name of the reference work or encyclopedia which they had theretofore caused to be published and sold as Standard Reference Work to New Standard Encyclopedia. From on or about August 1929 respondent Standard Encyclopedia Corporation, acting through respondents Stanford, Ward, and Greener, has published or caused to be published and has sold and caused to be transported from the State of Illinois into and through States of the United States other than Illinois its sets of encyclopedias or reference works and/or so called "extension services" to purchasers thereof located in a State or States of the United States other than the State of Illinois.

PARAGRAPH SEVEN. Respondents offer for sale and sell works of fiction by well-known authors in connection and combination with the encyclopedia, reference works, and extension service published, offered for sale, and sold by them.

PARAGRAPH EIGHT. The individual respondents herein, acting by and through the corporate respondents which they control and direct and the corporate respondents herein, in the course and conduct of their business as heretofore set out, are and at all times herein referred to have been in competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of sets of encyclopedias or general reference works.

PARAGRAPH NINE. Respondents Standard Education Society and Standard Encyclopedia Corporation and respondents H. M. Stanford, W. H. Ward, and A. J. Greener, acting by and through the corporate respondents herein, are in competition with other corporations, individuals, and partnerships engaged in publishing and offering for sale, selling, and distributing in interstate commerce in the United States various encyclopedias or reference works, among others the S. L. Weedon Company, of Cleveland, Ohio, publisher of the New Students Reference Work, which is offered for sale and sold as a subscription book direct to the consuming public by sales agents. The S. L. Weedon Company employs, on an average, one hundred agents, who cover the entire United States, offering for sale and selling the New Students' Reference Work published by the S. L. Weedon Company. These agents do not misrepresent the New Students' Reference Work, which has been planned by school people for school children. The said agents do not misrepresent the contents or the price or the terms of payment of the New Students' Reference Work.

PARAGRAPH TEN. Respondents herein sell their publications at retail to the public by salesmen on the subscription

plan. Respondent Standard Education Society publishes and sells in this manner a work known as the Standard Reference Work. Respondent Standard Encyclopedia Corporation publishes and sells in this manner a work known as the New Standard Encyclopedia. Both the Standard Reference Work and the New Standard Encyclopedia consist of ten volumes with content material arranged alphabetically on unnumbered pages. Accompanying the ten-volume set when delivered to a purchaser are a loose-leaf binder and, in some instances, loose-leaf material for insertion therein. In some instances respondents include in their offer and sell to purchasers a number of works of fiction. The usual price for either the Standard Reference Work or the New Standard Encyclopedia is $69.50. The usual price for the Standard Reference Work or the New Standard Encyclopedia when the fiction works are included in the offer is $89.00. The usual terms of sale are $6.95 cash with the order and $6.95 monthly when the price of the offer is $69.50. The usual terms of sale when the price of the offer is $89.00 is $8.90 cash with the order and $8.90 a month.

PARAGRAPH ELEVEN. Lists of names of prospects are obtained by respondents and a letter, a copy of which is set forth hereinafter, is sent to said prospects. Accompanying the letter is a postal card addressed to one of the respondent's agents confirming the name and address to whom the letter is sent, which card such person is asked to initial and return. The postal cards so returned are given to respondents' salesmen and representatives, whereupon such salesmen and representatives call upon and attempt to sell said persons respondents' publication. If the salesman makes the sale, he requires the purchaser to sign a contract or order. In some instances a copy of the order is furnished the purchaser and in some instances no copy of the order is given to the purchaser. The respondent, pursuant to orders for said books previously received as hereinbefore stated, causes said books to be shipped from its place of business in the city of Chicago, State of Illinois, or from its places of business in other States of the United States to the different purchasers thereof located throughout the various States of the United States and in different States from the State of origin of such shipment.

PARAGRAPH TWELVE. The letter heretofore referred to, which respondents send to prospects, is as follows:

"I am preparing a diversified list of well-connected representative people of your city as a bona fide original owner's list of a recently completed encyclopedia, which covers the entire range of human knowledge, giving full credit to

things which are American in contrast to ninety-five percent of the encyclopedias being sold in the United States today which are of foreign origin.

"I am authorized to present you with a complete, full bound set of this new work, artcraft de luxe edition, with the compliments of the publishers. We find it a distinct advantage to have a few sets placed with representative people before starting our sales campaign. The great merchant, Mr. John Wanamaker, once said, 'A favorable comment from a pleased user is more valuable to a business than a page of newspaper advertising.'

"The above procedure is a legitimate advertising expense prior to general publicity.

"Kindly initial and return the enclosed card, confirming the correctness of address (or make corrections) and the writer will see that you are supplied with the complete details without cost or obligation.

"Please treat the foregoing as personal and confidential."

These letters are sent out under the letterhead of "Charles E. Knapp, 189 W. Madison Street, Chicago", and are signed "Chas. E. Knapp, publicity manager."

Said letters are false and misleading in that the letters represent to those receiving them that respondents will give them a set of either the New Standard Encyclopedia or the Standard Reference Work free of cost as an advertising feature, and the addresses of said letters initial and return the enclosed postal card in that belief. In fact, respondents do not give away any sets of encyclopedias as an advertising feature and do not give any sets of their encyclopedias to anyone who receives said letters, but said encyclopedias are sold by respondents in connection with loose-leaf supplements and a research service, payment for all three items being included in the purchase price of $69.50 (when fiction books are included as aforesaid the price is $89.00). Said letters are used solely and intentionally by respondents for the purpose of obtaining the names of prospects upon whom respondents' salesmen can call for the purpose of soliciting them to purchase the said Standard Reference Work or the said New Standard Encyclopedia. The letterhead used on said letters has been adopted by respondents to conceal the fact that they are selling books.

PARAGRAPH THIRTEEN. The respondents having caused the above letter to be mailed to prospects in many localities, thereafter directed and instructed their agents to call upon the prospects to whom the letters had been sent, and upon other prospects, and to said prospects the said agents made the following representations:

1. That they represent the Standard Education Society of Chicago, or the Standard Encyclopedia Corporation.

2. That they are giving away a set of books; that they are not selling anything; that the books are free; that the books are being given free as an advertising plan.

3. Should the prospect be a banker, the agent represents that the work deals in financial matters. That the loose-leaf extension service keeps all financial matters up to date; that both take the place of Dun and Bradstreet. Should the prospect be a professor in some college or university, the agent represents that the work is the very latest encyclopedia; that it brings all technical and scientific subjects up to date, and, in some instances, that the work is a successor to the New International Encyclopedia. Should the prospect be a teacher or club and society woman, the agents represent that such prospect has been specially selected, and that the only return desired for the gift is permission to use the name of the prospect for advertising purposes and as reference.

4. To all classes of prospects the agents of the respondents represent that the Standard Reference Work or the New Standard Encyclopedia is being given free and said prospects are paying only for the loose-leaf extension service.

5. The agents of respondents represent to some prospects that the price of $69.50 is a reduced price, and that the regular price of the books and the extension service is $150.00, sometimes even as high as $200.

6. The agents of respondents represent to prospects that the loose-leaf extension service will take the place of such magazines as The Literary Digest and the Review of Reviews.

7. The agents of the respondents represent to prospects that certain sets of books by well-known authors, such as Rinehart, Kipling, O. Henry, Stevenson, or various combinations of these and other books, will be given, together with the Standard Reference Work or the New Standard Encyclopedia, absolutely free, and that the loose-leaf extension service will be furnished at a cost of $89.00.

The statements made by respondents in circular letters and through their agents that the Standard Reference Work would be given away free are false, deceptive, and misleading; the books were never given away free. The statement of agents of respondents that the Reference Work was being given as part of an advertising plan is false, deceptive, and misleading.

The statement of the agents of respondents that the Standard Reference Work deal in financial matters, that the

loose-leaf extension service keeps all financial matters up to date, that both of these take the place of Dun and Bradstreet; that the work is the very latest encyclopedia; that it brings all technical and scientific subjects up to date; that the work is a successor to the New International Encyclopedia; that the prospect has been specially selected; that the only return desired for the gift is permission to use the name of the prospect, are each and every one of them false, deceptive, and misleading statements.

The statement of the agents of respondents that the Standard Reference Work or the New Standard Encyclopedia is being given free and that the prospects are paying only for the loose-leaf extension service are false, misleading, and deceptive statements.

The statements made by agents of the respondents that the price of $69.50 is a reduced price; that the regular price of the books and extension service is $150.00 or sometimes even as high as $200.00 are false, deceptive, and misleading statements as $69.50 is the regular standard price for the Standard Reference Work or the New Standard Encyclopedia, the loose-leaf service, and the ten years' research privileges.

The statements of agents of respondents that the loose-leaf extension service will take the place of magazines such as The Literary Digest and Review of Reviews are false, deceptive, and misleading statements. The so-called "loose-leaf extension service" cannot in any way take the place of these or other similar magazines.

The statements made by agents of respondents that sets of fiction together with the Standard Reference Work or the New Standard Encyclopedia would be given absolutely free and that they are selling only the loose-leaf service for $89.00 are false, deceptive, and misleading; $89.00 being the regular price to any one for the Standard Reference Work or the New Standard Encyclopedia, the loose-leaf service and various assortments of fiction by various authors. The representations and statements made by the agents of respondents as aforesaid are made by said agents within the scope of respondents' business. The respondents knew that such representations and statements were being made by their agents and consented thereto.

PARAGRAPH FOURTEEN. The respondents, Standard Education Society, H. M. Stanford, W. H. Ward, and A. J. Greener, in their advertising matter and on the backs of their contracts make use of certain alleged testimonials from men connected with institutions of learning in the United States, from physicians, club women, newspaper editors, and others. Many of these alleged testimonials are garbled, un-

authorized, and have been made, when made at all, to cover a previous work, Aiton's Encyclopedia, which was a work quite different in form, in material, and in purpose from the Standard Reference Work. These same testimonials have been used year after year from 1912 to 1930 as expressions of opinion of eminent men as to the Standard Reference Work.

PARAGRAPH FIFTEEN: Respondents, Stanford, Ward, and Greener, have had their attention called to these practices by men whose names had been so used but notwithstanding such notice these respondents continued said practices in exaggerated form and made use of their creature, respondent Standard Encyclopedia Corporation and its publication the so-called "New Standard Encyclopedia" as the vehicle for continuing this method of misrepresentation. In the advertising matter for the New Standard Encyclopedia the following statements appear:

"At Last!—There is Something New Under the Sun."

"THE NEW STANDARD ENCYCLOPEDIA IS ALIVE ALWAYS UP-TO-DATE"

and under a heading, "What Others Say!" respondents purport to give statements made of and concerning the New Standard Encylcopedia.

Below in parallel columns are set forth some of the statements made by the respondents of and concerning the Standard Reference Work and circulated at least as early as 1925, and some of the statements made by the respondents of and concerning the New Standard Encylcopedia in 1930.

| Alleged testimonials in favor of Standard Reference Work circulated at least as far back as 1925: | Alleged testimonial in favor of the New Standard Encyclopedia circulated in 1930: |
|---|---|
| "UNIVERSITY OF NOTRE DAME, Paul R. Byrne, Reference Librarian: "For answering questions in a hurry the Standard Reference Work is most helpful. The matter is given in such concise form that it takes little time for the user to get right to the point wanted. This set of books is used continually by the students, as well as the reference staff." | "UNIVERSITY OF NOTRE DAME, Paul R. Byrne, Reference Librarian: "For answering questions in a hurry the New Standard Encyclopedia is most helpful. The matter is given in such concise form that it takes little time for the user to get right to the point wanted. This set of books is used continually by the students, as well as the reference staff." |

"UNIVERSITY OF MICHIGAN MEDICAL SCHOOL, O. M. Cope, Assistant Professor of Physiology:

"I am enjoying very much my Standard Reference Work, particularly in its use for my daughters in high school. The feature that appeals most to me is the method of keeping the work up to date without becoming either too cumbersome or too complicated for practical use."

"UNIVERSITY OF MICHIGAN MEDICAL SCHOOL, O. M. Cope, Assistant Professor of Physiology:

"I am enjoying very much my new Standard Encyclopedia, particularly in its use for my daughters in high school. The feature that appeals most to me is the method of keeping the work up to date without becoming either too cumbersome or too complicated for practical use."

In addition to the two instances above, the respondents make use in the same advertisement of the names Stanley L. Clark, city editor, Observer-Dispatch, Utica, N. Y.; J. F. Montague, M. D., secy. and treas. American Proctologic Society; Charles J. Higgs, M. D., Wilkes-Barre Pa.; Elizabeth Kenney, president, Business and Profesisonal Women's Club, Waterloo, Iowa.

None of these men or this woman ever wrote any testimonial or recommendation of or concerning the New Standard Encyclopedia. The representations that these men and this woman wrote the recommendations for the so-called "New Standard Encyclopedia" are false, deceptive, and misleading.

The statement in the above advertisement, "At Last! There is Something New Under the Sun" is false and misleading in its application to the so-called "New Standard Encyclopedia." This work is not new except for the name and the covers. It is the old Standard Reference Work revised.

PARAGRAPH SIXTEEN. The respondent Standard Education Society in conjunction with the respondents H. M. Stanford, W. H. Ward, and A. J. Greener, in addition to publishing, selling, and transporting or causing to be transported in interstate commerce a work entitled "Standard Reference Work", have also caused to be printed, sold, and distributed in interstate commerce a work which they have entitled National Encyclopedia and in the sale of this publication under the name National Encyclopedia used the same methods above described and do not disclose to the prospective purchasers the fact that the said National Encyclopedia is the identical publication sold and distributed by these respondents under the name Standard Reference Work, thus causing some purchasers to buy the said National Encyclopedia in the belief that the same is a separate and distinct publication.

PARAGRAPH SEVENTEEN. The respondents for the purpose of selling their publications Standard Reference Work and New

Standard Encyclopedia, show in the prospectus and on the fly-leaves of their volumes a list headed "Contributors and Reviewers", and under this heading place the names of educators who are known to be men of repute. In such lists they include many who have not been either contributors or reviewers to either the Standard Reference Work or to the New Standard Encyclopedia. Albert W. Rankin, of the University of Minnesota; William H. Sheppard, instructor in the public schools, Minneapolis; W. M. West, professor of history, University of Minnesota for 20 years prior to 1912; Monsignor Edward A. Pace, vice-rector 38 years, Catholic University, Washington, D. C., and general secretary of the Catholic University of America; Dr. Frank W. Ballou, superintendent of schools of the District of Columbia, are included in these lists. None of these men either contributed articles or reviewed articles for publication in respondents' works.

PARAGRAPH EIGHTEEN. The respondents in the course and conduct of their business and in addition to their distributing in commerce the Standard Reference Work, the National Encyclipedia and the New Standard Encylcopedia have also a branch business which they exploit under the name Standard Extension University, represented as a correspondence school. For the purpose of selling this course of instruction they prepared a form of contract upon which appears in red ink the words, "Special introductory enrollment. This is a life-time scholarship." The Standard Extension University was started in 1924, and the original price to anyone for its course was during 1924, $98.00. In 1925 the price for its course to anyone was $120.00, and in 1927 it was $135.00. The agents of the respondents, however, represented to the various prospects upon whom they called that these prices were special introductory prices and that the usual price of the course was $250.00. The agents of respondents further represented that the special price was given to ten students only and advised the prospect that the introductory offer would not be continued after the agent had secured the ten students.

The representations made by respondents' agents that the course in the Standard Extension University is being sold at a special price, that the said price is limited to a certain number of students, and that the price represents a "Special Introductory Enrollment" are false, misleading, and deceptive. The course was offered to everyone at the same price.

PARAGRAPH NINETEEN. The foregoing representations, sales methods, and statements were used and made by agents of respondents in the course and conduct of respondents' business. Many representations and statements made by such agents while so employed were false as heretofore set out.

Prospective customers to whom respondents' agents made said false representations and false statements and on whom said sales methods were used, relied upon the representations and statements made by said agents as aforesaid, and purchased books and extension service and the home study courses offered for sale and sold by respondents in the belief that the said representations and statements made by respondents' agents were true. In many instances persons purchased respondents' books and the extension service in reliance upon the said false representations and false statements, when such persons would not have purchased the said books or extension service but for the false statements and false representations made by respondents' agents in the course and conduct of their business as aforesaid, all of which is to the damage and injury of the said purchasing public, and tends to and does divert trade from competitors of respondents not using said false and misleading sales methods, statements, and representations.

PARAGRAPH TWENTY. Respondent Standard Encyclopedia Corporation was organized by the individual respondents herein in August 1929, approximately six months after the issuance of the original complaint herein by the Federal Trade Commission. The Commission concludes and infers from the record in this case and so finds that this corporation was organized by the individual respondent for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent Standard Education Society. The Commission also concludes and infers from the entire record and so finds that the individual respondents herein, M. H. Stanford, W. H. Ward, and A. J. Greener, have been using and are using the corporate respondents herein to carry on their business in the manner and form hereinbefore set out.

## CONCLUSION

The practices of said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce. The use by respondents of the methods of sale as hereinbefore found by the Commission has the capacity and tendency to and does in fact injure competitors who do not use such methods of sale, because (1) it diverts to respondents from their competitors sales of encyclopedias to persons who believe said false representations as made by respondents to be true and who purchase respondents' encyclopedias in and because of such belief; (2) it prejudices the public against the subscription-book industry as a whole and makes it difficult for re-

spondents' competitors to obtain interviews for the purpose of soliciting the sale of their encyclopedias; and (3) it causes the public to lose confidence in the representations of competing publishers who do not use such methods or make such representations. The practices of said respondents under the conditions and circumstances described in the foregoing findings constitute a violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission:

[SEAL] (Signed) C. W. HUNT, *Chairman.*

Dated this 24th day of December, A. D. 1931.

Attest:

(Signed) OTIS B. JOHNSON, *Secretary.*

## ORDER TO CEASE AND DESIST

(December 24, 1931)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 24th day of December, A. D. 1931.

Commissioners: C. W. Hunt, Chairman; William E. Humphrey; Charles H. March; Edgar A. McCulloch; Garland S. Ferguson, Jr.

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION; H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY, AND AS PRESIDENT, DIRECTOR, AND INCORPORATOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY, AND AS DIRECTOR AND INCORPORATOR OF STANDARD ENCYCLOPEDIA CORPORATION; AND A. J. GREENER, INDIVIDUALLY AND AS INCORPORATOR OF STANDARD ENCYCLOPEDIA CORPORATION

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and the testimony taken and briefs filed herein, and oral argument by the attorney for the Commission, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered that the respondents, Standard Education Society, a corporation; Standard Encyclopedia Corpo-

ration; H. M. Stanford; W. H. Ward; and A. J. Greener, and each of them, their officers, agents, representatives, and employees in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from—

(1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact.

(2) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

(3) Advertising or representing in any manner that purchasers or prospective purchasers of respondents' publications are only buying or paying for loose-leaf supplements intended to keep the set of books up-to-date for a period of ten years, when such is not the fact.

(4) Advertising or representing in any manner that respondents' publication is a recently completed, new, and up-to-date encyclopedia, when such is not the fact.

(5) Selling or offering for sale any set of books of the same text and content material under more than one name or title.

(6) Advertising or representing in any manner that the usual price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or representations, when such is not the fact.

(7) Advertising or representing any person as a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

(8) Advertising or representing that any person has given testimonials or recommendations for and concerning respondents' publications, when such is not the fact.

(9) Publishing or causing to be published and circulated testimonials or recommendations of and concerning respondents' publications alleged to have been made by any person when such testimonials or recommendations have not been made by such person.

It is further ordered that the respondents, Standard Education Society, a corporation, H. M. Stanford, W. H. Ward,

and A. J. Greener, and each of them, their officers, agents, representatives, and employees in connection with the offering for sale of any home study course of instruction in commerce among the several States of the United States or in the District of Columbia do cease and desist from:

(1) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers as a "Special Introductory Enrollment", and at a specially reduced price, when such is not the fact.

It is further ordered that respondents shall within sixty (60) days from the date of the service upon them of the order herein file with the Commission a report in writing setting forth in detail the manner and form in which the order has been complied with and conformed to.

By the Commission:

[SEAL] OTIS B. JOHNSON, *Secretary.*

# TESTIMONY BEFORE TRIAL EXAMINER

BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION, AND H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT OF STANDARD EDUCATION SOCIETY

TOWANDA, PA., *May 8th, 1929.*

Met, pursuant to notice, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, examiner.

Appearances: Robert H. Winn (Washington, D. C.) for the Federal Trade Commission.

1 PROCEEDINGS

Examiner AVERILL. For the record, Mr. Reporter, please note that Langworthy, Stevens, McKeag & Hurley, attorneys for the respondent, First National Bank Building, Chicago, Illinois, appear upon the answer as representing the respondents, and I am advised by Mr. Winn that the attorneys for the respondents have communicated with him and indicated that none of their staff would appear at this hearing today, so that it is clear they have notice of the hearing and opportunity to be here, if they so desire. I wish you would note, Mr. Reporter, that Miss Emma Sollick and Miss Myrtle Sollick, two witnesses duly subpoenaed on behalf of the Commission, appear this morning, and, after examination by counsel for the Commission, were excused.

LUCILLE COWLES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Miss Cowles, where are you teaching school?

A. In Willawanna, Pennsylvania.

Q. Were you, at some time, approached by agents purporting to represent the Standard Education Society?

A. I was.

Q. When was that—approximately?

A. June.

Q. Of what year?
A. 1928.
Q. And what work was he attempting to sell or dispose of?
2 A. Standard Reference book.
Q. And what was to be the terms upon which it was to be given to you?
A. I was paying for the extension service.
Q. And how much was the extension service?
A. $69.50.
Q. Was the extension service all that there was to the Standard Reference Work?
A. There was a set of books—the extension service, and the privilege of writing on any material.
Q. There was a set of books?
A. Yes.
Q. Of how many volumes?
A. I do not remember how many volumes there were.
Q. Was it approximately ten?
A. Near that; yes.
Q. Were you to pay for those?
A. No. These were being given away.
Q. Those were being given to you free?
A. Yes.
Q. The service of writing to the Standard Education Society and receiving information which might arise and which might not be covered in the work itself that you mentioned a moment ago?
A. Yes.
Q. Was that to be paid for or given free?
A. Given free.
Q. The extension service—I suppose you refer to
3 the loose-leaf extension service?
A. Yes.
Q. That was to be paid for?
A. Yes.
Q. And that was $69.50?
A. Yes.
Q. And that was all that you were to pay for?
A. Yes.
Q. Relying upon that, did you accept the books?
A. I did.
Q. And as you accepted the promise of the salesman to send you the books and you promised to pay $69.50 for the extension service?
A. Yes.
Q. Did he make any representations to you as to the approximate age of the volumes that were to be given to you free?

A. They were up to date, he said.
Q. Up to date?
A. Yes.
Q. He led you to believe they had been off that year, or a year before, or ten years before—what would you say as to that?
A. As late as a year before.
Q. Did he make any representations to you as to the recommendations of other persons? Did he show you any recommendations—any testimonials that had been made by other purchasers of this work?
A. He had some printed letters from leading edu-
4 cators in the United States.
Q. And relying upon their recommendations in part, you were induced to agree to pay the $69.50 for the extension service?
A. Yes.
Q. Did he tell you that the books were generally given away and that the price for the extension service was $69.50?
A. No.
Q. What did he say in relation to the ordinary price of the work, if you can remember—approximately?
A. The price was considerably higher, and they were doing this just this year to advertise the books.
Q. Are you a teacher, Miss Cowles?
A. Yes.
Q. At this time you had just recently graduated, I believe, from Mansfield?
A. That spring.
Q. Did the fact that you were a teacher, and a new teacher, have anything to do with the special price at which the work was offered to you?
A. The special price was just to teachers.
Q. In return for the special price, were you to render any service to the company other than to pay them the $69.50?
A. I was to recommend the books to others.
Q. Were you to write a letter recommending the books?
A. I do not think so. He showed me a letter that someone else had written, but I do not think I was to write one.
Q. But you were to recommend them in the community generally?
5 A. Yes.
Q. Your own idea was, then, that it was a part of the advertising scheme and that you were to act as their advertiser, so to speak, in the community in which you lived?
A. Yes.
Q. Did they then send the books to you, Miss Cowles?
A. Yes; shortly afterward.

Q. Prior to the time that the books were sent to you did you see anything that would lead you to believe there had been a misrepresentation?

A. I saw a clipping from the Rural New Yorker concerning the action of the Federal Trade Commission.

Q. Did you afterwards learn that the regular price of the books, for instance, or any other thing pertaining to the regular price of the books, that would lead you to believe that $69.50 was the regular price for the whole work?

A. Yes.

Q. Did you write to the company and tell them that the agent had misrepresented the work to you?

A. After I had a communication from them.

Q. As to what?

A. Why I did not take the books from the post office.

Q. The books had come in the meanwhile?

A. Yes.

Q. And you did not take them from the post office?

A. Yes.

Q. Did you send them back to the company?

A. No.

6 Q. Or did you leave them there?

A. I just left them there.

Q. But they wanted to know why you did not take them from the post office?

A. Yes.

Q. Miss Cowles, you received a letter from them?

A. Yes.

Q. Can you tell me, in effect, what was in that letter?

A. They asked why I attempted to do a thing like that—refuse to accept the books—when I had signed a contract to accept them.

Q. That was the effect of the letter?

A. Yes.

Q. And did you answer that letter?

A. I did.

Q. Have you a copy of your answer?

A. No.

Q. Incidentally, right here, have you the original of that letter that they wrote to you?

A. Not that I know of.

Q. What, in effect, did you tell them in the answer that you sent to them?

A. That I had found since then that they had misrepresented the books and that they had given them away before, or that they had said they had given them away before.

Q. Is that practically all you can recall that you told them?

A. Yes.

7 By the EXAMINER:

Q. Mr. Winn, with your permission, I want to ask one question. Miss Cowles, did this letter that you say you received from the Standard Education Society—do you know what became of it—what you did with it? Did you destroy it, or have you it at home?

A. I think I did—I think I destroyed nearly all of their letters.

Q. So that it would be impossible for you to produce that letter?

A. Yes.

By Mr. WINN:

Q. I might say here the letter you wrote to them was a written letter—you wrote it in ink?

A. Yes, sir.

Q. It was not a typewritten letter?

A. No.

Q. And you made no copy at the time you wrote it?

A. No.

By the EXAMINER:

Q. Miss Cowles, I notice that your subpœna is addressed to Orwell, Pennsylvania?

A. Yes.

Q. I also notice that you came from Willawanna, Pennsylvania, in obedience to this subpœna?

A. Yes.

Q. And that Willawanna is your present address?

A. Yes.

Q. And in obedience to this subpœna you came from Willawanna here?

A. Yes.

8 Q. When did you have to leave Willawanna to be here this morning?

A. Last night.

Q. You left there last night?

A. Yes.

Q. Therefore, you were under the expense of subsisting yourself during the time that you left there until you can get back there?

A. Yes.

Q. When will you get back there?

A. Tonight.

MARIAN KINGSLEY was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Please give your full name, Miss Kingsley.
A. Marian Kingsley.
Q. And you reside in——
A. East Smithfield.
Q. Did there come a time, Miss Kingsley, when a person or persons representing to be agents of the Standard Education Society come to call on you?
A. Yes.
Q. When was this?
A. In about June 1928.
9 Q. What work were they attempting to dispose of, if you recall?
A. The Standard Reference Work.
Q. Do you recall approximately what their story was?
A. We were to have loose-leaf service and the privilege to write somewhere for any work that we wanted, as far as our school was concerned—any outlines—any maps and work of that type free.
Q. And was there anything else that you were to get?
A. Books.
Q. You said just a moment ago that you were to get the extension service and the privilege of outlines—of receiving information from the company free?
A. No; we were paying for the loose-leaf service; we were getting the outlines and map work free and the books free.
Q. The books were free?
A. The books were free.
Q. The outlines and maps were free?
A. Were free.
Q. And you were to pay——
A. For the extension service.
Q. For the extension service?
A. Yes.
Q. The price of this extension service was to be what?
A. $69.50, for two weeks—that was special for two weeks.
Q. That was to be a special price for two weeks?
A. Yes.
10 Q. Do you recall what the regular price was?
A. I do not know; but it was much more than that.

By the EXAMINER:

Q. How do you know about what was to be the regular price?
A. He told me.

By Mr. WINN:

Q. Did you rely upon these representations as to the free books and the free outline service?

A. I did.

Q. And did you rely upon the fact that this was a special two weeks' price?

A. I did.

Q. And as a result you purchased the loose-leaf service?

A. Yes.

Q. Was the loose-leaf service to be the most valuable part of the work?

A. It was set forth that way; it was to take the place of a magazine.

Q. Of what magazine?

A. The Literary Digest.

Q. And the agent represented to you that the extension service of the Standard Education Society was to take the place of the Literary Digest in your home?

A. Yes.

Q. Were any representations made to you, Miss Kingsley, as to other persons who had subscribed to the books?

A. He had lists of names.

Q. Did he show you these lists?

A. Yes.

Q. Did you see any names there you were familiar with?

A. Members of my class at school.

Q. Did you see any other names—any other testimonials of other persons throughout the country?

A. I think not.

Q. What did the agent represent to you as to the approximate age of the books that were to be given to you free?

A. They were up-to-date and modern.

Q. Did he give you the impression that they were a year old, or two years old—three years old—five years old—or more than that, or less than a year old?

A. Well, they were recent books.

Q. Your own idea as to that would be that they were approximately of what date?

A. Two years at the outside.

Q. Nothing was said to you as to any extension service or school arrangement—correspondence school?

A. No.

Q. Would you have purchased these books, Miss Kingsley, had you known it to be a fact that the actual price of the books, extension service, outlines, and everything that was

included was actually $69.50 and was always $69.50 and was not a special price to you for two weeks only?

A. I think not.

Q. By the way, how many books were there to be?

A. There were to be ten bound volumes.

Q. And in addition to that——

12 A. Covers for the loose leaves.

Mr. WINN. I think that is all.

FLORENCE SHINER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Please give your full name.

A. Florence Shiner.

Q. And you reside where, Miss Shiner?

A. I am now teaching at Wellsburg, New York, at my address.

Q. At your post-office address, Miss Shiner?

A. Yes.

Q. Did there come a time when a person, or persons, purporting to represent the Standard Education Society call upon you?

A. Yes; on June 7th.

Q. Of what year?

A. 1928.

Q. Last June?

A. Yes.

Q. And what work were they selling, Miss Shiner?

A. The Standard Reference Library.

Q. What was the story in connection with this work as it was told to you, Miss Shiner?

A. I was to receive ten bound books, and at the end of ten years the reference material—extension material—would make fifteen volumes at the end of the ten years; and I was not paying anything for the ten volumes that I got at

13 first, but for the extension work I was to pay; then the research work was to be free, that I might send for within ten years—at any time during ten years.

Q. You were then to receive ten volumes and the outline service free?

A. Yes; I was.

Q. And you were to pay how much for the extension service?

A. $69.50; also I was to pay the postage on the books.

Q. Did the agent or agents make any representations as to the ordinary or regular price of this work?

A. Yes, sir; I saw a paper that he had telling that the next year the books—they weren't selling these books at the present time to anyone but teachers; and at the end of a year they would be selling to anyone for a price of, I believe, $125, but I am not sure whether it was $110 or $125.00.

Q. At any rate, it was over $100.00?

A. Yes.

Q. The reason he came to you was what?

A. That I was a teacher and in a position to recommend the books to the parents.

Q. Did he want you to recommend the books?

A. Yes; orally. He said there would probably be men around from the company who would ask me how I liked the books, and I was to give them a recommendation.

Q. You understood that was for the purpose of helping to advertise the books in the locality?

A. Yes.

14 Q. Did he represent to you in any way that other persons had already purchased or recommended the books without purchase?

A. Yes; he told me he had just come from Mansfield, I believe—he said that day he was at my house about 4:00 o'clock in the afternoon, and he said that he came from Mansfield that day and Miss Winans had recommended the books.

Q. Who is Miss Winans?

A. A teacher at Mansfield.

Q. And what is that school?

A. A State teachers' college.

Q. And that is the school you graduated from?

A. Yes.

Q. And when did you graduate?

A. Last year; 1928—May.

Q. A few weeks prior to the time he came to call upon you?

A. Yes.

Q. If you had known, Miss Shiner, that the regular price of this work was actually $69.50 and that that included in every case the first ten volumes and the maps and outline service that was furnished in addition to the extension service, would you have purchased this work? In other words, did the fact that this was a free offer——

A. That probably influenced me to a large extent.

Q. You actually signed the contract?

A. I signed a card. The contract that I have here does not have my name on it at all.

Q. You did sign a contract, however—you signed a paper?

A. Yes.

15 Q. And as a result of that they sent you the books?

A. Yes.

By the EXAMINER:

Q. You do not happen to know the name of this agent or representative who called on you?

A. Mr. Real, who was at my house.

Q. Had you known him previously?

A. No; I had not.

The EXAMINER. That is all.

ALICE MCAULIFF was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Miss McAuliff, your residence is where?

A. Towanda.

Q. And the subpoena in response to which you appeared here was addressed to you here at Towanda?

A. Yes; it came at Towanda.

Q. Where did you come from to attend this hearing?

A. My post-office address is Wellsburg, New York.

Q. And you are engaged in work in that vicinity?

A. Yes; I was a teacher.

Q. At what town?

A. Ridgbury Township, Centerville School, Pennsylvania.

Q. And you came here from where?

A. From Centerville, Pennsylvania.

Q. And you are going back to Centerville immediately after this hearing?

16 A. Yes. My post office will be Wellsburg rather than Centerville.

Q. Did there come a time, Miss McAuliff, when a representative or a person or persons purporting to be representatives of the Standard Education Society call on you?

A. Yes.

Q. And approximately when was that?

A. In June, sometime—1928—I don't remember the date.

Q. Sometime in last June?

A. Yes.

Q. And what did they represent themselves as being?

A. More as an advertising idea than selling.

Q. An advertising idea for what?

A. Of the Standard Education Library. They were giving ten books, and I was paying for the extension service.

Q. The Standard Education Society was putting out an encyclopedia—is that it?

A. Yes.

Q. Composed of ten volumes?

A. Yes.

Q. And they had an advertising scheme, you say?

A. Yes.

Q. And what were you to get as a result of that advertising scheme?

A. The ten books, free.

Q. They were to be given to you free of cost?

A. Yes.

Q. And then what else were you to get?

17 A. That was all.

Q. That was all you were to get?

A. Yes; just the ten books free, and then I was to pay for the extension service.

Q. How much was the extension service to be?

A. I do not think he told me the sum, but I was to pay $5.00 a month.

Q. For how long?

A. I do not remember just how long.

Q. Were any representations made as to the age of these first ten volumes that were to be given to you free?

A. Yes; they were modern.

Q. Would you say that they were one year old or two years old or five years old—would you say the impression you got was which of these number of years, if any?

A. Well, he represented as being up-to-date, and I did not form any conclusion.

Q. Did the agent make any other representations that you can recall?

A. That I was getting these books cheaper than ordinarily and also that there was only one in each community who was getting them.

Q. Did he tell you, or do you recall, approximately, what the regular price of the books was to be, inasmuch as you were to get them cheaper than ordinarily?

A. No; I do not remember.

Q. You do not know approximately what they were to be?

A. No; I do not think I do.

18 Q. But the price at which you were to get them was——

A. I believe almost half.

Q. Almost half of the regular price?

A. Yes.

Q. And you can't recall the price which you were to pay for them?

A. No; I can't.

Q. Was this advertising scheme, in which this agent or agents were engaged, general in the town of Towanda?

A. It was limited to only one teacher, I believe.

Q. And you were that one teacher?

A. Yes.

Q. And no one else in this community was to get this set of books at this price?

A. No.
Q. You were the only one?
A. Yes.
Q. Did you agree to pay for the extension service and get the books free?
A. Yes.
Q. Were the books sent to you?
A. They were sent but I did not take them from the office.
Q. Why did you not take them from the office?
A. I had read an article or a clipping from the Rural New Yorker stating that these books were not what they were represented to be.
Q. If you had known that this was not an advertising scheme but a selling scheme, and that the books were to be generally sold at the price at which they were offered to you, and that the price at which they were offered to you covered the whole work, would you then have purchased the books?
A. I think that was what influenced me mostly.
Q. The fact that they were being given to you in an advertising scheme?
A. Yes.
Q. Then what would your answer be to the other question; would you then have purchased the books?
A. No; I do not think so.
Q. Did you write to the company, Miss McAuliff?
A. I think I wrote; yes.
Q. Did you write in response to a letter which you received from them after the books came?
A. I do not know whether they wrote, or whether I wrote and told them that I did not want them.
Q. You cannot recall whether they wrote to you or not first?
A. I do not think I can.
Q. If they did write to you first, would you have the copy of the letter at home?
A. No; I have not.
Q. What happened to it?
A. I destroyed it.
Q. Then you wrote to them?
A. And I wrote to them before or after they wrote to me; yes.
Q. And if you had received a letter, either before or after, I understand that it has been destroyed?
A. Yes; it is.
Q. Did you keep a copy of the letter you wrote to them?
A. No; I did not.

Q. Can you tell me, in substance, what you wrote to them?

A. I cannot remember whether I wrote that their books were misrepresented or whether I just did not want them—I cannot remember which now.

Q. Do you recall the reasons which prompted you to write and tell them that you did not want the books?

A. Yes; I had found out that they were misrepresented.

Q. And you cannot recall whether you told them that they were misrepresented?

A. I cannot remember whether I told them that or not.

Q. Did they relieve you of your contract?

A. They have written several letters, all year.

Q. What is their apparent intention at the present time?

A. They have been more or less threatening—going to law.

Q. Would you say from their letters that they do not intend to relieve you of your contract?

A. Yes.

The EXAMINER. Have you any of those letters?

The WITNESS. I think I have one—I may have it with me.

The EXAMINER. Letter produced by witness purports to be from one John E. Roche, attorney at law, Metropolitan Building, Chicago, Illinois, and is not, on its face, a letter from the respondent.

Mr. WINN. Were you shown any testimonials, or did
21 the agent state to you that any persons had recommended this work?

A. Just where my classmates from Mansfield had signed up, but no other official recommendations.

By the EXAMINER:

Q. I understood you to say that this agent represented to you that these books or that this extension service was to be sold at the price which he named only to one or, at any rate, to a very limited number of people in the same community or neighborhood—is that correct?

A. Yes.

Q. Do you know whether the work was sold to others in that community besides yourself?

A. Yes; it was. That, too, influenced me in not taking the books.

Q. You found that other people in the same community had purchased the same service?

A. Yes.

Q. At the price, do you know?

A. I do not know whether it was at the price or not; no.

Q. So you never took the books, did you?

A. No; I did not.

The EXAMINER. All right. Thank you.

SARA SCOTT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Please give your full name, Miss Scott.

A. Sara Scott.

22 Q. And where do you reside, Miss Scott?

A. Troy.

Q. This subpoena was addressed to you at Troy?

A. Yes.

Q. And you came from Troy today?

A. Yes.

Q. Did there come a time, Miss Scott, when a person or persons purporting to represent the Standard Education Society of Chicago came to see you in connection with a work produced by them?

A. Yes.

Q. Approximately when was that?

A. June 1928.

Q. What was the work which they represented?

A. The Standard Reference.

Q. What was their story in connection with that, as near as you can recall?

A. Everything was free.

Q. You were to receive the books free?

A. Yes.

Q. And the extension service free?

A. Yes.

Q. And the outlines—did he say anything to you about the outlines?

A. Yes.

Q. The outlines free?

A. Yes.

Q. Did you sign a contract?

A. No.

23 Q. Was a contract signed in your name?

A. Yes.

Q. Who signed it?

A. The fellow who represented the company.

Q. Did he represent anything to you as to the price?

A. Nothing.

Q. As to the price to other people—were they giving the books to everybody free?

A. No; just one in a community.

Q. And you were to do what in exchange for that?

A. Advertise.

Q. Did he say anything as to what price other people were to pay for the books?

A. I do not remember.
Q. Did the books come to you as a result of his signing the contract for you?
A. Yes.
Q. After the books came, did you receive any communications from the company?
A. Yes; and I returned them.
Q. You returned them?
A. Yes; without opening them.
Q. You do not know, then, what was in the communications?
A. No.
Q. You do not know whether they were billing you for the books or not?
A. No.
Q. Did you keep the books?
24 A. No.
Q. Did you send them back, too?
A. Yes.
Q. Why did you do that?
A. Because I found that they were misrepresented. I opened them when I got them and found they were not what they were supposed to be.
Q. Did you still think they were free?
A. Yes. There was one letter—the first letter that I got—I opened.
Q. Have you that letter?
A. No.
Q. What happened to that letter?
A. I destroyed it.
Q. Can you tell me, in effect, what was in that letter?
A. The price was $69.50.
Q. You were, then, according to that letter, required to pay $69.50?
A. Yes.
Q. And that was the first time that you got any idea that the books were not being given to you free?
A. Yes.
Q. Did you know at that time that the $69.50 was to cover the whole work or was to cover a part of it?
A. I supposed all of it.
Q. And you sent the books back?
A. Yes.
25 Q. And you sent all the rest of the letters back unopened?
A. Yes.

By the EXAMINER:

Q. Did you get the extension service?

A. I got one envelope—I think it was that—I sent it right back; I did not open it.

Q. I understood you to say that you did not take the books when they came, but because you thought they had been misrepresented—in what way had they been misrepresented?

A. He told me there would be primary work, especially for what I was doing, at least—two books for the primary work. I opened the books when they came, and there was not even one whole volume that contained all primary work; there was nothing that I could use.

Q. You are a school teacher, I take it?

A. Yes.

Q. When did you graduate?

A. 1928.

Q. What school?

A. Mansfield State Teachers College.

The EXAMINER. All right; thank you.

ELWOOD E. WHITESELL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your full name, please?

A. Elwood E. Whitesell.

Q. Mr. Whitesell, did there come a time when a
26 certain person or persons purporting to represent the Standard Education Society called on you in relation to a work which they published?

A. Yes, sir.

Q. When did they call on you—where?

A. At my place of business, 420 Main Street, Towanda.

Q. And what business are you in?

A. Pharmacist.

Q. Approximately when did these agents call on you?

A. January 21, 1927.

Q. What was their representation? What was their story at that time, Dr. Whitesell?

A. They, at the time—in fact, there was just one agent was carrying this set of books—one of the sample books which they are selling, supposed to be the latest in reference works, which he was to sell to me for the sum of $69.50 and some cents—a reduction from the regular price, which he stated at that time to be $120.00 for the complete works. This included a volume, with a service covering a period of ten years, from 1927 to 1937.

Q. What kind of a service was that to be?

A. An extension service—a loose-leaf extension service; and at the time of receiving the books I also received the covers which were to be used for placing the loose-leaf sections in as they came to me. At the time he represented to me I was to receive these books and this extension service at the price of the contract, with a verbal agreement that in the course of a month or six weeks, or probably two months, they would come back to Towanda to work Towanda and the outlying sections, selling this set of books; and when they returned I was to deliver to him a letter of
27 recommendation as a business man for him to use in the selling of this set of books. At the time that I was to deliver the letter on his return I was to receive a receipt in full for these volumes and also the extension service. He has not returned to this date.

Q. Was there to be more than one volume in the original set?

A. I think I received ten volumes.

Q. Let me see if I understand you, Doctor. You contracted to pay $62.50 or $69.50?

A. 69.50, yes; $69.50.

Q. You contracted to pay $69.50?

A. Yes.

Q. And then, after you had had an opportunity to go over the books, he was to come back and you were to give the agent a letter of recommendation, in return for which letter of recommendation you were to receive a receipt in full?

A. That is right.

Q. For the $69.50, which you had contracted to pay?

A. Yes.

Q. And I believe you also said that the $69.50 was a reduction and that he represented the regular price of the books to be $120.00?

A. $120.00.

Q. Now, Doctor, were any representations made to you as to other persons having purchased the books?

A. In the course of his conversation he mentioned that the president of the Miners Savings Bank of Wilkes-Barre, whom I know very well, had made the purchase under the
28 same conditions. Also, he had told me that the president, L. B. Davenport, of Shickshinny, who was president at that time of the Farmers National Bank of Shickshinny, had made this same purchase; but since then I have found out that it was not so but that he had talked with him, but he had not made the purchase.

Q. Do you know whether or not the banker in Wilkes-Barre made the purchase?

A. No; I could not say as to that.

Q. But you do know the banker at Shickshinny did not make the purchase?

A. No.

Q. If you had known that the banker in Shickshinny did not make the purchase, and if you had known that the regular price of the books was $69.50, and if you had known that it was not the intention of the agent to relieve you of liability on your contract, would you have purchased the books?

A. I do not think so.

Q. Have you ever notified the company of the misrepresentations that were made?

A. Yes; I wrote them a letter.

Q. Have you a copy of the letter you wrote them?

A. I am afraid not. I made a copy of it at the time, but I am afraid I destroyed the copy, I got so disgusted with it. Fortunately I have saved that contract.

Q. Will you tell us what was in the letter, in effect?

A. About the only thing I asked them was when their agent was coming to get the letter of recommendation that he had agreed to take and give me a receipt in full for the
29 books, and I never heard from them.

Q. You never received a response at all?

A. No.

By the EXAMINER:

Q. Did you get the books?

A. I did.

Q. You took them from the carrier—whoever brought them?

A. Yes; they came by express, "collect."

By Mr. WINN:

Q. You have been paying for them ever since?

A. I have paid for the books; yes.

Q. And they are all settled up?

A. Yes.

Mr. WINN. Thank you very much, Doctor.

Mr. WINN. With your permission, sir, if you will adjourn the hearing until 10:00 o'clock a. m., at Syracuse, on next Friday the 10th instant.

The EXAMINER. Gentlemen, the hearing at Towanda being completed, we will adjourn the hearings to Syracuse at the civil-service room, United States Post Office Building, at 10:00 o'clock a. m. Friday, May 10th, 1929.

(Now, to wit, 11:25 a. m., same day, hearing adjourned to Syracuse, as aforesaid.)

30 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL

SYRACUSE, N. Y., *May 10, 1929.*

Met pursuant to notice, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, examiner.

Appearances: Robert H. Winn (Washington, D. C.), for the Federal Trade Commission. Henry Junge (Chicago, Ill.), for the Federal Trade Commission. Attorneys for the respondent not appearing, having given notice that they would not attend the hearings until such time as Chicago was reached.

31 PROCEEDINGS

Examiner AVERILL. Gentlemen, we are ready, and I am going to call first up to the stand Miss Lydia Wright.

LYDIA WRIGHT was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Examiner AVERILL:

Q. You are here today, I understand, in obedience to subpoena directed to you at——

A. Forestville, New York.

Q. Forestville, New York?

A. Yes.

Q. When did you leave Forestville?

A. Eleven yesterday.

Q. About what time did you arrive at Syracuse?

A. Nine last night.

Q. And you came in obedience to this subpoena?

A. Yes.

Q. And you will return to Forestville?

A. Yes.

Examiner AVERILL. Mr. Winn, I understand that this witness is to be excused from testifying?

Mr. WINN. Yes.

Examiner AVERILL. That is all, thank you.

32 LILA MORAVIA was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. You reside where?

A. In —. I came from Ithaca this morning.

Q. You came from Ithaca this morning in response to subpoena directed to you by the Federal Trade Commission?

A. Yes.
Q. And you return to Ithaca tonight?
A. Yes.
Q. Did there come a time when a representative or representatives purporting to represent the Standard Education Society called on you in connection with a work which was being published by the society?
A. Yes.
Q. Do you recall the name of that work—of the book?
A. Of the book, you mean?
Q. Yes.
A. Standard Encyclopedia.
Q. Approximately when was this that they came?
A. The last part of October.
Q. In what year?
A. '28.
Q. 1928?
A. Yes.
33 Q. Now, can you tell me what the proposition of this agent was?
A. Well, he just called at the door and asked if I was expecting him, and I says "No." And he said he had sent a letter saying he would call at the school, and then he said not to be scared because he was not an agent; he was not selling this thing but giving something away. And he said—he asked if I was acquainted with the encyclopedia and I told him that I was not. And then he said, named several names that had been sent in from the State, and said the encyclopedias would not cost a cent, but the loose-leaf extension service was to—was to—be paid, four dollars and a half at first, and then five dollars a year for the ten years. And then he asked me if I would take them, and I asked if that was all we had to pay, and he said yes; and so he asked me to sign my name and address on a paper so he would know where to send the books and where to write if he wanted to use my name for a reference, and I did. And then he asked me if I knew of any other young teachers that had taught a year or two; and I said; "I thought you said a list of the names was sent to you." And he said: "I did, but I thought there were some others I could call to see." And then he left. And he said to send him four dollars and a half the first of the week, because if I didn't have it—and I forgot to ask him the place to send it, and he didn't leave any address, and I didn't send it, and so when I got the first letter, I wrote to the company telling them I didn't
34 want the books, but they sent them, or sent word from the express office, but I called the express office and told them that I didn't want them and they sent them back.

Q. You said your name had been sent in from the State; what did you get the impression that that was?
A. Something about the education department, being a progressive teacher or something?
Q. You are a teacher in the State of New York?
A. Yes.
Q. And were at that time?
A. Yes.
Q. You said something concerning the loose-leaf service—your understanding was that that was to run for how long?
A. Ten years.
Q. What was the form of that service to be?
A. I understood this loose leaf was this four dollars a year and I thought it was to place in the book, and I received three of them.
Q. Now, your testimony as I understand it is, then, that the books were to be given to you free?
A. Yes.
Q. And that you were to pay for the loose-leaf extension service?
A. Yes.
Q. Over a period of ten years?
35 A. Yes.
Q. Had you known that the regular price of the work to everybody was $69.50——
A. No.
Q. Would you have purchased the books?
A. No.
Q. Do you recall the name of the agent?
A. No; I do not.
Q. The books were actually sent to you?
A. Yes.
Q. At the express office?
A. Yes.
Q. And you returned them?
A. Yes.
Q. Did the agent leave a duplicate contract with you?
A. No; he did not.
Q. You know that this was the Standard Education Society that you were dealing with?
A. That is where the letters and everything came from.
Q. And you know that was the Standard Education Society?
A. Yes, sir.
Q. Let's see that correspondence that you have, please.
(Witness produces papers.)
Q. I hand you a letter, a paper writing; can you identify that?

36 A. Yes.

Q. Will you tell just what it is, please? It is not necessary to read it.

Examiner AVERILL. You don't need to say what is in it.

Q. What is that paper you have in your hand?

A. It is a letter telling me to call up the express office.

By Examiner AVERILL:

Q. From whom?

A. The Standard Education.

Q. To whom? Who is it written to?

A. To Lila Moravia.

Q. To yourself?

A. Yes.

Examiner AVERILL. That is all.

Mr. WINN. I ask that that be marked for identification as the Commission's Exhibit No. 1.

Examiner AVERILL. Off the record.

The same may be received and marked "Commission's Exhibit No. 1."

Mr. WINN. I think that is all unless you have something.

By Examiner AVERILL:

Q. As I understand—if, as I understand from your testimony, you thought that the books were to be given to you free—why, when the express company notified you that the books were there, did you not take the books?

37 A. There have been other teachers that had told me about it—older teachers—that we would have to pay for the books, and that they had had the same experience, and that—well, I don't know as for any other reason.

Q. Did you sign any paper at the time this agent was there talking to you?

A. I wrote my name and address, but I didn't know I was signing a contract.

Mr. WINN. She testified, I think, that she wrote her name and address in order that the agent would know where to send the free books, and that it was not until after that that she learned.

By Examiner AVERILL:

Q. When did you first learn that you were to pay anything?

A. Oh, it was—why, you see, the first letter—I received the first letter from the book company saying that they had received my order, and I wrote them that I didn't want them, and they sent the next letter that they had sent them to the express office.

Q. The next letter is the one already identified and marked "Commission's Exhibit No. 1"?

A. Yes.

Q. So you had a letter prior to this?
A. Yes.
Q. And that gave you the information about paying
38 for the books? Is that right?
A. I don't know just what it said about paying for them. It said they had received my order for them.
Mr. WINN. I think I can get this straightened out.

By Mr. WINN:

Q. As I understand it from your testimony, he told you that the books were free?
A. Yes.
Q. And you signed a paper, giving him your name and address, so that he would know where to send the books?
A. Yes,
Q. He then told you that the loose-leaf extension service would cost you five dollars a year and that you were to pay four dollars and a half now?
A. Yes.
Q. And did you tell him at that time that that was all right?
A. Yes; just that I would.
Q. And then he left?
A. Yes.
Q. And later you decided that you didn't want the books?
A. Yes.
Q. And later you wrote the company and told them that you didn't want the books?
A. Yes.
Q. And you knew that the loose-leaf extension service would cost you sixty-nine dollars and a half before the
39 agent left your place?
A. No; I didn't think it was $69.50.
Q. How much did you think it would cost you?
A. Let's see: Five dollars a year for the ten years and then pay four dollars.
Q. You gained the impression then that it would cost you fifty-four dollars?
A. Yes.
Mr. WINN. Does that straighten it out in your mind?
Examiner AVERILL. Yes.

By Mr. WINN:

Q. You talked to the other teachers immediately after this sales agent left you, and you learned that the books were not——
A. Yes.
Q. Exactly what you wanted?
A. Yes,

Examiner AVERILL. But she learned it from the teachers because she didn't examine these books herself, I understand.

Mr. WINN. Of course, that really isn't in controversy here. I think that is all.

Examiner AVERILL. If you have your subpoena, Miss?

(Witness produces subpoena.)

40 EULENA FRISBEE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Where do you live?

A. East Meredith.

Q. Did there come a time when an agent purporting to represent the Standard Education Society of Chicago called on you?

A. Yes.

Q. Can you tell me approximately when that was?

A. It was the 10th of December.

Q. 1928?

A. 1928.

Q. Do you recall this agent's name?

A. Yes; it was Mr. Rink.

Q. What did he say that he was representing?

A. He said that he was representing the Standard Education Society.

Q. In what capacity?

A. He said that he was giving away a set of books.

Q. Do you recall what set?

A. The Standard Reference Work.

Q. What else did he say, as near as you can recall?

A. He said that he was giving away fifteen sets to teachers in every county and that my name had been given to
41 him as being a progressive teacher and that that was how he happened to call on me. And he said that he was not selling anything—was just giving it away.

Q. Did he say that these books were ever sold?

A. Yes; he did.

Q. And did he give you the approximate price?

A. I think it was around $200.00, he said they were.

Q. And these were the same books that he intended to give to you?

A. No; he was going to give us the Encyclopedia, but we were to buy the loose-leaf service.

Q. And you gained the idea that the Encyclopedia and the loose-leaf service together sold for over $200.00?

A. Yes.

Q. And how much was he to sell the loose-leaf service to you for?

A. $69.50.

Q. I gather from your testimony that you are a teacher in the State of New York?

A. Yes; I am.

Q. Do you recall where you were when the agent called on you?

A. I was at the schoolhouse.

Q. Was it during the school day?

A. He came just before school started in the afternoon, about a quarter of one.

42 Q. Did he stay until—how long did he stay?

A. I think he stayed until half past one or two o'clock.

Q. What time is school supposed to start in the afternoon?

A. One o'clock.

Q. After he told you, Miss Frisbee, that he was giving the books away, what did he want you to do?

A. Why, I asked him if he would give the books away if I didn't buy that loose-leaf service, and he said "Yes"; and I thought, of course, I would take them then. But he said, of course, I would want the loose-leaf service to keep myself up to date.

Q. Did he agree to that?

A. He said that I would not have to buy any papers, and I said I didn't want to, anyway. And he wanted to know how I would keep informed of events, and I told him that we had papers at home and I didn't have to pay for them.

Q. What kind of papers did he say?

A. Why, newspapers, I guess.

Q. Did he give you the impression that the extension service would take the place of daily newspapers?

A. Yes; he did.

Q. Did you then sign the paper that he had?

A. Yes; I did.

Q. What did you understand that you were signing?

A. When he told me to sign, I supposed I was only

43 supposed to pay $6.95 every year. But after I signed my name he told me to sign for every month.

Q. You supposed this was $6.95 a year? How did you get that impression?

A. $6.95 a year for ten years, making $69.50 for the loose-leaf service.

Q. After you had signed that paper then he told you that you were to pay it how?

A. In monthly payments.

Q. Would you have purchased this work had you known that the ordinary price at which this entire work, including the extension service, was ordinarily sold to anybody who could be induced to buy?

A. No; I would not.

Q. For $69.50?

A. No.

Q. Did the books come as the result of the contract?

A. Yes; they came; but I think they are at the station.

Q. You never took them out of the station?

A. No; I have not.

Q. Did you ever receive any of the loose-leaf extension service?

A. Yes; two of them.

Q. What did you do with those?

A. I haven't even opened them yet.

44 Q. They are at your home?

A. Yes.

Q. Let me see that correspondence, please, that you have in your hand. I hand you a paper writing. Can you tell me what that is?

A. A letter from the Standard Education Society.

Q. Addressed to whom?

A. To myself.

Q. And did you receive that letter?

A. Yes; I did.

Mr. WINN. I offer that in evidence and ask it to be marked as "Commission's Exhibit No. 2."

Examiner AVERILL. Paper in question may be received and marked "Commission's Exhibit No. 2."

(Commission's exhibit no. 2 so marked.)

By Mr. WINN:

Q. They are still trying to collect the money that was due them under the terms of your so-called "contract"?

A. I sent them twenty dollars about a month ago, two months ago.

Q. They have not released you from your contract?

A. No.

By Examiner AVERILL:

Q. ~~I~~understand then that you have made some payments?

A. Yes; I have.

45 Q. But you have not the books?

A. No; I have not.

Q. And at the time that this agent called on you, you were teaching at this East Meredith School?

A. Yes.

Q. And you are still teaching at that school?
A. Yes.
Q. Miss Frisbee, you came from East Meredith, did you not?
A. Yes; I did.
Q. That is approximately 288 miles, round trip?
A. Yes.
Q. What time did you leave?
A. Around half past five yesterday morning.
Q. That is May the 9th?
A. Yes.
Q. When can you leave going back?
A. I think seven o'clock tonight.
Q. That brings you home about when?
A. About——
Q. Just about the same time to go back as to come?
A. Yes.
Q. And you came by train?
A. Yes.

46 RUTH ALLENE BAILEY was thereupon called as a witness and, being duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your occupation?
A. I am a teacher in New York schools.
Q. Where are you teaching?
A. At Greenville.
Q. New York?
A. Yes, sir.
Q. How long have you been teaching at Greenville?
A. Just this year.
Q. Beginning last September?
A. Yes.
Q. You came from Greenville, New York, to Syracuse in response to a subpoena directed to you by the Federal Trade Commission?
A. Yes.

By Examiner AVERILL:

Q. How far is Greenville from here?
A. 177 miles one way.
Q. One way 177?
A. Yes.
Q. When did you leave there?
A. Yesterday morning about 5:30.
Q. When did you get here?
47 A. On the 2:21 train.
Q. When will you go back?

A. I am not planning to go back until Saturday or Sunday.

Q. I know; but if you did go back today, what time would you have to leave in order to make your connection to get back?

A. At 5:30.

Q. You could leave here at 5:30; that is the earliest train that would take you to your place?

A. I believe so.

Q. But you are going back, are you not?

A. I am going back; not tonight, though.

By Mr. WINN:

Q. Miss Bailey, did there come a time when a man representing, or purporting to represent, the Standard Education Society, of Chicago, called on you?

A. He did.

Q. Approximately when was that?

A. November 28th, 1928.

Q. And where did he call on you?

A. At the schoolhouse at Greenville.

Q. And approximately what time of the day?

A. About ten minutes of twelve.

Q. Just before school recess for luncheon?

A. Yes.

Q. What did this agent say that he was representing, Miss Bailey?

48 A. He was representing the Standard Education Society, and he was not selling anything; he was giving away books for advertisement, and he would give me this set of books.

Q. What set of books was this?

A. Standard Reference books. The only thing that I would have to do in payment for these was to agree to let my name be used as reference for the books.

Q. He was to give them to you free?

A. Yes.

Q. In exchange for the use of your name?

A. Yes.

Q. As a reference?

A. That was until after I had signed my name; and then he told me more.

Q. Did you then sign your name to a piece of paper?

A. First, he agreed to send this for ten years; and then I signed my name.

Q. Were you to pay for the loose-leaf extension service according to the information you had at that time?

A. I did not understand so then.

Q. And then you signed your name?

A. Yes.

Q. For what purpose?
A. So he would know where to send the books.
Q. After you signed your name he still continued to
49 talk with you?
A. Yes.
Q. What did he say then?
A. He informed me that I was to pay $69.50.
Q. What did he say that was to be paid for?
A. In payment for the loose-leaf service.
Q. It was not to be in payment for the books?
A. No.
Q. Did you understand that it was the usual practice of the Standard Education Society to give this work away in connection with a subscription to the extension service?
A. No. I understood the usual proceeding was to buy the books, and also the loose-leaf service.
Q. Did you understand that the books and the loose-leaf service were usually sold for $69.50?
A. He did not definitely say so, but he gave the impression that it was a very special bargain to teachers—that book.
Q. Miss Bailey, was anything said as to the age of the set of books?
A. He didn't give any definite age, but as much as said that they were right off the press; that it was a new set of books.
Q. Then the impression you gained from what he said was that the books would be one year or two or five years old?
A. About a year old.
Q. Miss Bailey, would you have purchased the
50 books had you known that the usual and ordinary price of the books and the extension service to anyone who could be induced to pay was $69.50?
A. I would not.
Q. Do you recall the name of the agent?
A. Donald M. Keenan.
Q. I hand you a paper writing and ask you if you can tell me what that is?
A. It is a check I signed for the Standard Education Society, $6.50.
Q. Was that check paid?
A. It was.
Q. And you received it from where?
A. You mean cancelled?
Q. Yes.
A. From the bank.

Q. And had your account been deducted, this $6.50, had it been deducted from your account for the books?

A. It had.

Mr. WINN. I offer this check in evidence at this time and ask that it be marked "Commission's Exhibit No. 3."

Examiner AVERILL. What is the purpose?

Mr. WINN. To show that the Standard Education Society actually received this check and cashed it, the check being issued by Miss Bailey, and in that way to show that Mr. Keenan was representing the Standard Education
51 Society, which is the respondent in this case.

Examiner AVERILL. All right. The paper in question may be received and marked "Commission's Exhibit No. 3."

(So marked.)

By Mr. WINN:

Q. Did you receive the Standard Reference Work as the result of Mr. Keenan's call upon you?

A. I did; and I also wrote the company that I cancelled my order.

Q. Have you the books now?

A. I have not.

Q. Have you returned them?

A. Yes.

Q. Did you receive the extension service?

A. I have; two or three of the papers.

Q. Have you them now?

A. I have them at home.

Q. Have you used them?

A. I just glanced over them. I didn't pay much attention.

Q. Have you paid anything since your check of $6.50?

A. No.

Q. Has the company released you from your contract?

A. No.

Q. They are still trying to collect?

A. They were a few days ago.

Mr. WINN. I think that is all that I have.

Examiner AVERILL. That is all I have.

52 MARY GAMBEE was thereupon called as a witness and, being duly sworn, testified as follows:

By Mr. WINN:

Q. Where are you from?

A. Romulus.

Q. You came from Romulus in response to a subpoena directed to you by the Federal Trade Commission?

A. Yes.

Q. When did you leave Romulus?
A. About 7:15 this morning.
Q. And do you expect to return to Romulus this evening?
A. Yes.

By Examiner AVERILL:

Q. About how far is it?
A. About 120, round trip.

By Mr. WINN:

Q. What is your occupation?
A. Teaching school.
Q. Where?
A. In the Fayette District School.
Q. In what State?
A. New York.
Q. How long have you been teaching school?
A. Two years; this is the second year.
Q. Did there come a time when an agent purporting to represent the Standard Education Society called upon you?
A. Yes, sir.
53 Q. Where did he call upon you?
A. At the home of one of the pupils in the district.
Q. When was this, approximately?
A. About 4:30. I had just gotten there. I went as soon as school was out.
Q. Approximately what time of the year?
A. Approximately October or November.
Q. What year?
A. 1928.
Q. What was this agent representing himself as?
A. He said he was not an agent; he said he was giving a set of books away for the Standard Education Society.
Q. What was the set of books?
A. The Standard Reference Work.
Q. You said that he said that he was giving a set away. Would you kindly explain what his proposition was?
A. First, he said he was not an agent. I didn't want to talk with him. He said he was not an agent and was giving these books away to a certain few special teachers, and wanted to know if he couldn't show me parts in the books. And there were two of them. He showed me the parts in the books, and then he told me he wanted to know if I wouldn't subscribe to this magazine, this loose-leaf extension service, because that would keep the encyclopedia up to date. And I didn't want to, but he kept staying and talking, and so finally I did sign my name. He asked me if I would take it, and I
54 signed my name and address. And he told it was the place where to send the books to me, and I was to

pay a certain amount by the month for the magazine, not for the other.

Q. Not for what other?

A. For the encyclopedia. And so I signed my name and address; and he asked me to write my name and address, and then so much a month; I remember it was less than usual, because I didn't feel that I could pay the full amount, the usual price.

Q. Did you understand that it was the general practice of the Standard Education Society to give away free encyclopedias in connection with the loose-leaf extension service?

A. No. I understood that the encyclopedia would be given away without that, but that we would not want them because it was necessary to have the loose-leaf extension service to keep the encyclopedia up to date.

Q. And it was your understanding that the encyclopedia was usually given away?

A. No; just to teachers.

Q. To all teachers?

A. No. Just to a certain number of teachers. I don't know whether he said just in the county or in the district.

Q. What was the usual practice, as you understood it, in regard to the encyclopedia?

A. Selling them.

55 Q. Do you recall approximately what they ordinarily sold for?

A. No; I don't; I don't remember. I don't know as he said what they sold for; but I know he said it was a bargain.

Q. Did you understand that the encyclopedia and the loose-leaf extension service were usually sold for $69.50, when the encyclopedia was sold with the loose-leaf extension service?

A. No; I didn't.

Q. What did you understand in that connection?

A. Well, I didn't understand that they usually gave them away that way.

Q. I understand that you understood that they were usually sold?

A. Yes.

Q. And you don't know what they were usually sold for?

A. No.

Q. Did you think or did you understand that they usually sold for more or less than $69.50?

A. More.

Q. A little more or much more?

A. Much more.

Q. Then you understood that this was an exceptional offer?

A. Yes.

Q. Did the agent in this case make any representations as to the age of the encyclopedia?

A. I understood it was new.

56 Q. Would you say one year, two years, five years, or ten years old?

A. About one year.

Q. About one year old?

A. Yes.

Q. What representations were made by the agent in regard to the value of the loose-leaf extension service?

A. Well, it was invaluable; it was very valuable, because he said it would take the place of other magazines in the home, the Literary Digest and other things.

Q. He told you it would take the place of the Literary Digest?

A. Yes.

Q. How often was this loose-leaf service to come?

A. Quarterly.

Q. How many agents did you say called on you in this connection?

A. Two.

Q. Do you recall their names?

A. No; I don't.

Q. After they had explained the proposition as you have outlined it, you say that you signed a paper?

A. Yes.

Q. What did you sign that paper for?

A. To give them my name and address, so that they would know the amount that I was to pay each month.

57 Q. You understood that this was a contract?

A. No; I didn't.

Q. You understood that thereby you were promising to pay a certain amount of money?

A. Yes.

Q. In exchange for what?

A. Loose-leaf service.

Q. Were the books sent to you as a result of the conversation and the paper that you signed?

A. Yes; they were sent to the express office and I had them returned from there. I had written the company that I didn't want the books after that. When I got home I wrote to them because I didn't feel that I could afford it.

Q. Did you know at the time that any misrepresentations had been made?

A. No. Perhaps this does not have anything to do with it, but I remember I didn't want to buy them. I was very hesitant; and one man didn't say anything, and when they went away, this one man shook hands and said that when I

got through paying for the loose-leaf service he would be through selling them himself.

Q. He said that he would be through selling himself?

A. Yes; by the time I finished paying for the loose-leaf service he would be through selling himself.

By Examiner AVERILL:

Q. What did you think he meant by that?

A. I thought somehow, I didn't know why he would
58 say that; I thought that was a peculiar remark to make.

By Mr. WINN:

Q. Did you understand that he would stop selling?

A. No. The way it struck me, I thought it was something wrong that he thought he was doing.

Q. You had that intuitive feeling?

A. Yes.

Q. Did the loose-leaf extension service come in connection with this contract?

A. Two or three came and I sent them all back, and I have not been down to the post office.

Q. So you don't know whether any more have been sent to the post office or not?

A. No; I don't.

Q. Did you examine the books?

A. No; I didn't. You mean the——

Q. The volumes.

A. No; I didn't.

Q. Did you examine the loose-leaf extension service?

A. No; I didn't.

Q. I hand you a paper writing, and ask you if you can tell me what it is?

A. Yes; it is a letter that I received from the Standard Education Society.

Mr. WINN. I offer this in evidence, and ask that it be marked "Commission's Exhibit No. 4."

59 Examiner AVERILL. The paper in question may be received in evidence and marked "Commission's Exhibit No. 4."

(So marked.)

By Mr. WINN:

Q. Did the agent leave a copy of the contract with you?

A. No; he did not.

Q. He didn't tell you what his name was?

A. No.

Q. Either one of them?

A. No.

Q. Did you pay any money in connection with this contract?
A. No; I didn't.
Q. Did you pay any at all?
A. No.
Q. Have you been released from your contract?
A. No.
Q. They are still trying to collect from you?
A. Yes.
Q. If the agent in this case had offered to sell you the books and the loose-leaf extension service for $69.50, payable five dollars a month, would you have accepted his proposition?
A. No.

60 OPAL BRYSON was thereupon called as a witness and, being duly sworn, testified as follows:

By Mr. WINN:

Q. Did you come from Canandaigua, New York?
A. About five miles from Canandaigua.
A. Canandaigua is your post office?
A. Yes.
Q. When did you leave Canandaigua?
A. About four o'clock this morning.
Q. And you plan to return to Canandaigua this evening?
A. Yes.
Q. And you came to Syracuse in response to a subpoena issued by the Federal Trade Commission and directed to you?
A. Yes.
Q. Approximately how far is it to Canandaigua?
A. 160 miles from here.
Q. Round trip?
A. Yes.
Q. What is your occupation?
A. At the time I was teaching.
Q. Do you have an occupation at the present time?
A. No. I stay home.
Q. You are staying at home?
A. Yes.
Q. During the months of October and November were you employed—October and November 1928—were you employed?

61 A. Yes.
Q. What was your occupation at that time?
A. Teaching.
Q. You taught through the school year?
A. Until last Thursday.

Q. The school year ended then?
A. No; I resigned.
Q. Did there come a time when a man purporting to represent the Standard Education Society of Chicago called on you?
A. Yes.
Q. Approximately when was this?
A. The last of October.
Q. In what year?
A. 1928.
Q. And what did he purport to be doing?
A. When he came to the door he said he was not selling anything, so I let him come in. He said he was giving away the Standard Reference Work with the loose-leaf extension service.
Q. What door was this that he came to?
A. The school.
Q. Approximately what time of day?
A. About a quarter to four, I think.
Q. The school day was over?
A. No; we were having physiology. After the class was over he——
Q. He stayed there until the school day was finished?
62 A. Yes.
Q. If you will continue, please with his story.
A. After he said he was not selling anything, then he said that he was giving away the Standard Reference work; from what he said I thought that we had to take the loose-leaf extension service. Then he said if I wanted the books they could be sent to the—to Canandaigua to the post office; and he asked me to write my name and address so there could not be any mistake, on a piece of paper, and I did. And he said several of the teachers had signed for them and had given their address, and gave some names of them; and some of them had paid $4.50, the amount you were supposed to pay when you signed, and some had paid $9.50. So I gave him a check for $9.50; and then I went to the bank and had the payment stopped.
Q. What did you understand that the check for $9.50 was to cover?
A. Well, $4.50 for the first payment on the books, and then five dollars for the quarterly payment on the loose-leaf extension service.
Q. You said there was $4.50 for the first payment on the books?
A. On the loose-leaf extension service, I mean.
Q. You were purchasing the loose-leaf extension service?
A. Yes.

Q. And your understanding as to the books was what?

A. That they were to be given to me free.

63 Q. Did you understand that the books, the encyclopedias, were usually given away in connection with the loose-leaf extension service?

A. No; I think he told me they were usually sold for $150; or $200, but special teachers had been recommended to him and I was one of them, and that he was giving those teachers those books free.

Q. What was the purpose of this free offer as you understood it?

A. Well, just for advertising purposes, I thought.

Q. Any representations made to you as to the approximate age of this work?

A. Well, he said they were just new books; I imagine a year or two old.

Q. Do you recall the name of the agent?

A. I don't think he told me his name.

Q. I believe you testified that you did sign your name and address to a piece of paper?

A. Yes.

Q. Did he leave a copy of the paper with you that you had signed?

A. No; he didn't. I wrote to them after I had thought it over and told them I didn't want the books; and they sent a letter saying that it was too late to forget the contract, and I didn't even know I signed a paper; and my father wrote to them then and said I didn't even have a copy of the contract. And they said the agent left one with me; but he didn't leave anything at all.

64 Q. If the agent had offered to sell you this set of books with the loose-leaf extension service for the total amount of $69.50, would you have accepted his proposition?

A. No.

Q. I hand you a paper writing and ask if you can tell me what it is, two sheets?

A. It is a letter written to me by the Standard Education Company in answer to the one that I said I didn't want the books, and they said it was too late.

Q. What is the date of the letter?

A. November 2nd, 1928.

Mr. WINN. I offer this in evidence and ask that it be marked "Exhibit No. 5." And this is off the record, I would like to read one paragraph into the record.

Examiner AVERILL. It may be received and marked "Exhibit 5."

(So marked.)

I don't know about the writing. Of course, the letter speaks for itself. If there is anything in the letter which you desire to interrogate the witness about, as to her understanding or instruction, that would be permissible.

By Mr. WINN:

Q. Were the books sent to you?
A. To the freight office.
Q. When they were sent to the freight office, did you take them out of the freight office?

65 A. No; my sister called the people at the freight office and told them that I didn't want them, and they sent them back.

Q. Did she call at your request?
A. Yes.
Q. Did you receive the loose-leaf extension service?
A. Yes. Two of them, I believe. One of them I marked "Refused" and they sent it back.
Q. I believe you said you stopped payment on your original check?
A. Yes.
Q. Have you paid anything since?
A. No.
Q. Have you been released from your contract?
A. No.
Q. The company is still trying to collect the $69.50 from you?
A. Yes.

66 MARGERY HENRY was thereupon called as a witness and, being duly sworn, testified as follows:

By Mr. WINN:

Q. Where do you live?
A. Wolcott.
Q. Did you come from Wolcott to Syracuse for this hearing?
A. Yes.
Q. In response to a subpoena directed to you by the Federal Trade Commission?
A. Yes.
Q. When did you leave Wolcott?
A. Seven o'clock this morning.
Q. And you expect to return to Wolcott this evening?
A. Yes.
Q. How far from here to Wolcott?
A. Fifty miles.
Q. One way?
A. Yes.
Q. What is your occupation?

A. Teacher.
Q. How long have you been teaching?
A. Just this year.
Q. Did there come a time when a person purporting to represent the Standard Education Society called upon you?
A. Yes.
67 Q. Approximately when?
A. Either the 4th or the 5th of October.
Q. Where did he call upon you?
A. At the schoolhouse.
Q. Approximately at what time of day?
A. Approximately at a quarter of three.
Q. Was school in session?
A. Yes.
Q. What did he purport to represent?
A. Said he was a representative of the Standard Education Society.
Q. And doing what?
A. He said he was—he said he was not an agent; he said he was giving away a set of books.
Q. What set of books?
A. The Standard Reference.
Q. What else did he tell you as near as you can recall?
A. First, he wanted to know if he could come in; he said he was giving away a set of books; and he asked me if I had received a letter saying that he would be there, and I said no. So he came in, and it was nearly time for recess, so I dismissed my pupils, and then he went on to tell me how the company were giving away these sets of books, placing them around among a few of the teachers as an advertising scheme, and he wanted to explain it, and wanted to know if I would take them. And I told him, as I already had one set of encyclopedias, and didn't feel I could
68 take another one. And he said that by taking this that I could save this amount, by taking this loose-leaf extension service of buying all my literature during the year, current events, papers.
Q. You told him you were already buying one encyclopedia?
A. Yes.
Q. And that you didn't want to buy this one?
A. I told him I had and I didn't want them.
Q. I understood he was to give them to you?
A. The books were to be given to me; yes.
Q. When you told him you were already buying one encyclopedia and couldn't afford another, he then offered to sell you what?
A. The loose-leaf service.

Q. And your understanding at that time was that you were to receive what?

A. The books free and the loose-leaf service.

Q. And the loose-leaf service was to cost you how much?

A. $69.50.

Q. For how long a period was the loose-leaf service to run?

A. Ten years.

Q. Did you understand that the books were in the ordinary course of trade, given away in connection with the sale of the loose-leaf extension service?

A. No; I did not.

Q. What did you understand was the usual practice
69 in connection with the books?

A. That they were usually sold with the loose-leaf service.

Q. Did you understand how much they were approximately sold for?

A. He gave the impression that it was some more than $69.50.

Q. Did you understand that the loose-leaf extension service usually sold in connection with the books?

A. When they were sold; yes.

Q. What did you understand was the usual practice for the loose-leaf extension service when sold with the books?

A. I don't know; he didn't say.

Q. The price to you was to be $69.50 for the loose-leaf extension service alone?

A. Yes.

Q. Did you understand the books were to be given in your community generally in connection with the sale of the loose-leaf extension service?

A. He said he was around in a few of the schools for advertising.

Q. Just to the school teachers?

A. Yes.

Q. And to all of the school teachers?

A. No; just a certain number.

Q. Were any representations made to you as to the age of that encyclopedia?

A. He gave me the impression that they were new.

70 Q. Could you say one, two, three, or five years?

A. Two or three.

Q. Two or three years?

A. Yes.

Q. Did you finally sign a paper?

A. Yes; I did; because he was so persistent; I couldn't get rid of him.

Q. What did you understand that you were signing for?
A. I was writing my name for him to send the books to.
Q. Did you understand that you were agreeing to pay for the loose-leaf service?
A. Yes, sir.
Q. Did you receive the books?
A. I did not.
Q. Were they sent to you?
A. No.
Q. Have you received any of the loose-leaf extensions?
A. I received two and refused them.
Q. Did you pay anything to the agent?
A. I paid $4.50 the day he was there.
Q. Have you paid anything since?
A. No; and I have never heard anything from it, only that one letter. I wrote to them and ordered them to cancel my order, and they wrote that they did not cancel orders. That is the only letter I received from them.
Q. Do you recall the name of the agent?
A. No.

71 Q. Did he give you a copy of the contract?
A. No; he didn't. He said he left it on my desk, and I went to the door to say something to him and he was gone.
Q. Did you read the contract before you signed?
A. No; he handed me a pencil.
Q. And you signed?
A. Yes.
Q. If the agent had offered to sell you the set of books and the loose-leaf extension service for $69.50, would you have accepted?
A. No.

72 DOROTHY CHAFFEE was thereupon called as a witness and, being duly sworn, testified as follows:

By Mr. WINN:

Q. You reside where?
A. Fulton.
Q. Fulton, New York?
A. Yes.
Q. And you came from Fulton in response to a subpoena directed to you by the Federal Trade Commission in connection with this case?
A. Yes.
Q. When did you leave Fulton?
A. About eight o'clock this morning.
Q. And you plan to return to Fulton this evening?
A. Yes.

Q. How far is it from Syracuse to Fulton?
A. About thirty miles and a half.
Q. One way?
A. Yes; one way.
Q. Your occupation is what?
A. Teaching school.
Q. How long have you been teaching?
A. Just this one year; my first year.
Q. Did there come a time when an agent or a man purporting to represent the Standard Education Society called on you?

A. Yes.
73 Q. Approximately when was this?
A. The last of October some time.

Q. In what year?
A. 1928.
Q. He called on you where?
A. At the school.
Q. Approximately what time of day was this?
A. I couldn't say; it was during school hours. I couldn't say whether it was morning or afternoon.
Q. School was in session?
A. Yes.
Q. What was his purpose in calling on you, as he outlined it?
A. To get my permission to send me some books free of charge, so that he could use my name as a reference and as sort of a scheme for advertising—for advertising purposes.
Q. What were these books?
A. The Standard Reference Work.
Q. Did you agree that he could send you these books free of charge?
A. If he wanted to.
Q. Was there anything else that happened?
A. Well, I signed my name so he could send the books to me, so he could use my name as a reference, and then later he informed me I would have to take the loose-leaf extension service for ten years, and it came to about sixty-nine dollars, and I would have to pay it monthly.

74 Q. That wasn't to be given to you free?
A. No; that was not free.

Q. Did you understand that this book was ordinarily given away free in connection with the sale of the extension service?
A. No; I understood they were both sold.
Q. Did he tell you ordinarily what approximately the regular price of the Standard Reference Work was?
A. No; I don't know as he did; but I understood that they were much more.

Q. Much more than this?
A. Yes; much more.
Q. Did you understand that this advertising campaign in which this company was engaged was general at this particular time; that they were giving these books away indiscriminately to everybody in connection with the recommendation and the subscription to the extension service?
A. No; but later I understood that he went to all the schools right around there after he left.
Q. Did the agent make any representations to you as to the age of this particular work?
A. Why, a year old or so.
Q. They were just new?
A. Yes.
Q. And your impression was that it was a year or so old?
A. I thought so.
75 Q. Did you sign the paper that he wanted you to sign?
A. Yes.
Q. And then you afterwards understood that it was an agreement to pay for the loose-leaf extension service?
A. Yes; after I signed it.
Q. You said you later understood that he went to all the school teachers in that section?
A. All he could get hold of.
Q. Did you ever write the Standard Education Society in reference to this?
A. I wrote to them the next morning.
Q. You didn't tell them that the agent had misrepresented the work to you?
A. I couldn't think whether I did or not. I wrote that I decided I didn't want them.
Q. Do you recall the name of the agent?
A. No.
Q. He left a copy of the contract that you signed?
A. No.
Q. Did he give you an opportunity to read the contract that you signed?
A. No.
Q. School was in session during the time that he was talking with you?
A. Yes; it was.
Q. If this agent had offered to sell you the books
76 and the extension service for the total sum of $69.50, would you have accepted his proposition?
A. No; I would not.
Q. Did you receive the books?
A. No; I wrote and cancelled my order. And I told the postman that I didn't want the books, to have them sent

back, but I didn't hear that they came there or came to the express office.

Q. You don't know whether they came or not?

A. I haven't heard a word of them; no.

Q. Did you receive a loose-leaf service?

A. Yes; three of them, I think. One of them was opened while I was away, and the other two were sent back.

Q. Did you pay the agent anything at the time you signed the paper?

A. No.

Q. Have you paid anything since?

A. No.

Q. Have you been released from your contract?

A. I don't know. I don't think I have received any letters since then.

Q. Have they advised you that they released you from your contract?

A. No.

Q. I hand you a paper writing and ask you if you can tell what that is?

77 A. It is a letter from the Standard Education Society to myself.

Q. What is the date of it?

A. November the second.

Q. You received that letter?

A. I did.

Mr. WINN. I offer that in evidence as Commission's exhibit 6.

Examiner AVERILL. Received and marked "Commission's Exhibit No. 6", consisting of two pages.

(So marked.)

By Examiner AVERILL:

Q. What representation, if any, did this man make to you as to the value to you of the loose-leaf extension service?

A. Why, he said that if I had this service it would not be necessary to take any other magazine, because all the world's happenings would be right in this extension service, and it would not be necessary to take anything else. I did not quite agree with him there, but I didn't say so.

Q. But that was pointed out to you as one of the advantages?

A. Yes.

Q. That it would save you the expense of taking other magazines of a certain type?

A. Yes.

78 NORMAN F. BUTTERWORTH was thereupon called as a witness and, having been duly sworn, testified as follows:

By Mr. WINN:

Q. Where do you reside?

A. In Utica.

Q. In New York State?

A. In New York State; yes.

Q. What is your occupation?

A. Teacher of industrial arts.

Q. You came to Syracuse from Utica in response to a subpena directed to you by the Federal Trade Commission?

A. Yes.

Q. How far is it from Utica?

A. The speedometer said 51½ miles.

Q. You came from Utica this morning?

A. Yes, sir.

Q. And you plan to return this evening?

A. Yes.

Q. Did there come a time when a man purporting to represent the Standard Education Society called on you?

A. Yes.

Q. Approximately when was that?

A. A matter of about three years ago.

Q. Can you give me a closer date than that?

A. I could by referring to a copy of the contract
79 which you have there.

Q. For the purpose of refreshing your memory I hand you the copy of the contract.

A. That was the 20th of December 1926.

Q. He called on you on the 20th of December 1926?

A. Yes.

Q. Where did he call on you?

A. My home.

Q. What did he purport to do?

A. He had this set of books, which was given free as a, I, not as, but a set of books was given for a letter of recommendation. The loose-leaf service went with that, and that you paid for.

Q. What did you understand that you were to pay for the loose-leaf service?

A. $69.50.

Q. Did you understand that the books were usually given away in exchange for a letter of recommendation and a sale of loose-leaf service?

A. In a restricted sense, that they gave them to a restricted number of people, using that way of advertising rather than magazine advertising.

Q. Did you understand that was the general way they disposed of the encyclopedia?

A. In Utica. I don't know about other places.

Q. And that the books were to be given away all over
80 Utica, and that the extension service was to be sold?

A. No; that the books later on were to be sold in Utica.

Q. And how general did you understand the giving-away proposition to be?

A. I asked him specifically on that, and he said only to his knowledge about fourteen to fifteen teachers, people.

Q. Where?

A. In Utica.

Q. That were to be——

A. Given the set of books.

Q. Did you understand that other persons were to be approached in connection with the books in Utica?

A. Yes.

Q. What did you understand was to be the price of them in connection with the approach to these other people?

A. That they were to be sold, as I remember, at a price of $110.00 in that neighborhood.

Q. Did you understand that the price of $110.00 included the loose-leaf extension service?

A. I don't know as I recall about that; but as I understood it, I took it to include both.

Q. You understood, then, that you were getting a reduction of approximately forty dollars?

A. Yes.

Q. Did you sign any paper?

A. I did.

81 Q. What did you understand the paper that you signed to be?

A. It was a contract authorizing them to send the loose-leaf service for ten years, with terms of five dollars, I think it was, down, and five dollars a month.

Q. Did you pay the five dollars down?

A. Yes; to the agent.

Q. Have you paid anything since?

A. I have paid $25.00 since.

Q. Did you receive the books?

A. I have got the books now.

Q. You still have them?

A. Yes.

Q. Have you received the loose-leaf extension service?

A. I have received two installments and have refused the others.

Q. What representations, if any, were made to you as to the value of the loose leaf?

A. Well, they were to take care of all recent events in detail, of world scope.

Q. Did you have any correspondence with the company as the result of the agent's representations to you?

A. They drew a draft on the bank against me, and in refusing that I wrote them a letter refusing the draft and cancelling the contract.

Q. I hand you a paper writing and ask you if you
82 can tell me what it is?

A. It is a carbon copy of the letter I wrote to them refusing the draft and cancelling the contract.

Q. What is the date of the letter?

A. December 12, 1927.

Q. When was this carbon copy made?

A. At the time that I wrote the letter to them.

Q. And this sheet of paper was in the typewriter at the same time as the sheet of paper which you signed and sent to them?

A. Yes; I typed this myself.

Q. It is a duplicate original?

A. Yes; a duplicate original.

Q. Of the letter that you sent to them?

A. Exactly.

Mr. WINN. I offer this duplicate original letter in evidence and ask that it be marked "Commission's Exhibit No. 7."

Examiner AVERILL. The same may be received and marked "Commission's Exhibit No. 7."

(So marked.)

By Mr. WINN:

The pencil notations that are on this letter were made by you?

A. Made by the manager of the Better Business Bureau in Utica.

Q. You had nothing to do with that?

A. No.

83 Q. They are not a part of the letter?

A. No.

Q. What is the part of the letter which is a carbon copy of the letter which you sent to the Standard Education Society?

A. All that is not in pencil.

Q. You mean by that the typing?

A. The typing is all carbon copy.

Q. Did you receive any answer to this letter which has just been introduced in evidence?

A. Not from the Standard Education Society.

Q. Do you recall the name of the agent who waited upon you in this connection?

A. He signed his name C. A. Karsner.

Q. If this agent had offered to sell you the Standard Reference Work with the loose-leaf extension service both for the price of $69.50, would you have accepted his proposition?

A. I might have done so, because at that particular time I was in more or less of a receptive mood, and had a young son of mine who was constantly needing something of that sort in the very near future.

Q. If the agent had not represented to you that the ordinary price of the work was approximately $110.00, but had said that the work was usually sold for $69.50; that is, both the encyclopedia and the service, would you then have accepted it from him?

A. No; I think then that I would have seen through the scheme.

84 Q. Were any representations made to you as to the age of the Standard Reference Work?

A. Other than to say that they were all new plates.

Q. He told you that they were all new plates?

A. Yes. He did not specify as to how new.

Q. Had your subsequent examination of the books borne out his statement?

A. Well, only on subjects that I am familiar with, apparently they are new.

Q. The subjects with which you are familiar apparently are up to date in the work?

A. Apparently; yes.

Q. What are those subjects?

A. Well, along the industrial line, such as various woods, for instance, stains, things of that sort.

Q. If the plates from which this work was printed had been made in 1913, would it have been probable that the same facts in the subjects with which you are familiar would have been in such a work as this, then, as would be in such a work if put out in the last year?

A. Yes; because those facts have been known for years.

Q. Then, would you say that although the work is apparently up to date in the subjects with which you are familiar; that in those subjects the facts which were up to date fifteen years ago would also be up to date today?

A. Yes; it would not prove anything necessarily.

85 Q. So that, so far as you are concerned, the plates might be fifteen years old?

A. Yes.

Q. I hand you a piece of paper and ask you if you can tell me what it is.

A. This is the order that came to me after I had signed the contract, and it is a series of coupons for the loose-leaf service.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit No. 8."

Examiner AVERILL. The paper in question may be received and marked "Commission's Exhibit No. 8."

(So marked.)

By Mr. WINN:

Q. Have you been released from your contract?

A. Not by any written or implied word from the Standard Education Society.

Q. When you ordered them to cancel your subscription you understood that you were cancelling what?

A. A contract for the loose-leaf service.

Q. Have you retained the original encyclopedia?

A. Yes.

Q. Upon what basis have you retained such?

A. According to the contract which I signed and the words of the agent, these were absolutely free and no indebtness connected with them.

86 Q. And for that reason you have kept the work?

A. Yes.

Q. You have, however, sent back all of the loose-leaf service that have been sent to you since you cancelled the contract?

A. Since I cancelled; yes.

Examiner AVERILL. Adjourned to ten o'clock tomorrow morning in the same room, in the Civil Service room, post office building, Syracuse.

87 (Docket No. 1574)

SYRACUSE, N. Y., *May 11, 1929.*

Met, pursuant to adjournment, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, examiner.

Appearances: Mr. Winn, for the Commission. No appearance as yet for the respondent.

DELBERT K. PREST was thereupon called as a witness and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. You reside where?

A. R. D. No. 1, Mackay Avenue, Camillus, New York.

Q. Is that close to Syracuse?

A. Yes; that is a suburb of Syracuse. It comes under the town of Camillus.

Q. You came here this morning in response to a subpena directed to you by the Federal Trade Commission?

A. Yes.

Q. In the matter of the Standard Education Society?

A. Yes.

Q. Did there come a time, Mr. Prest, when a repre-
88 sentative purporting to be from the Standard Education Society called on you?

A. Yes.

Q. Approximately when was this?

A. 1925, slightly prior to the date of that certificate.

Q. I will hand you the certificate for the purpose of refreshing your memory. Can you tell me when he was there?

A. The fore part of August 1925.

Q. And what, Mr. Prest, was the story that this representative had?

A. He claimed he had selected a few preferred men in the business life of the west end of Syracuse to make a special offer in regard to a Standard Reference Work or encyclopedia.

Q. What was the offer, Mr. Prest?

A. The offer consisted of the works of America's three hundred best authors, pocket size, and ten or more volumes of the works of Mary Roberts Rinehart, 10 handsomely bound volumes of the Standard Education Society's Encyclopedia, together with the loose-leaf service covering a period of ten successive years, all for the price of $89.50, which offer was positively special and was below the price which others would be required to pay.

Q. Did you understand, Mr. Prest, that you were buying all of these books and that at the $89.50 was the purchase price of the entire offer?

A. I understood that the purchase or subscription
89 price covered the loose-leaf ten years' service.

Q. What led you to this understanding?

A. The statements of the salesman.

Q. Can you recall, approximately, what the statement of the salesman was in this regard?

A. The salesman spread out upon my desk photostatic copies of these various books, stating that all these would be free provided I subscribed to ten years' service.

Q. Did you subscribe to the service?

A. I did.

Q. Did you receive the books?

A. I received the books in due course of time.

Q. And have been receiving the extension service since?

A. I have been receiving the extension service since.

Q. Do you recall the name of the representative who called on you?

A. My memory tells me it was a Mr. Wall.

Q. I hand you a paper—can you tell me what that is?

A. This paper was the certificate which was mailed to me from the Chicago office of this company, verifying their contract with me, covering the ten-year loose-leaf service, having on it the coupons which normally would be required to be sent in from year to year in order to get this yearly service.

Mr. WINN. I offer that in evidence and ask that it be marked "Commision's Exhibit No. 9."

Examiner AVERILL. The same may be received and
90 marked "Commission's Exhibit 9."

(So marked.)

By Mr. WINN:

Q. Have you been released from your contract?

A. No; I am still paying on the contract.

Mr. WINN. I think that is all, Mr. Averill, that I have to ask Mr. Prest.

Examiner AVERILL. I have not anything to ask him.

ALBERT LEE O'BANION was thereupon called as a witness and, having been duly sworn, testified as follows:

By Mr. WINN:

Q. Where do you reside, Professor O'Banion?

A. At present I reside at 618 East State Street, Ithaca.

Q. What is your occupation?

A. I am an instructor in electrical engineering in Cornell University.

Q. Did you come to Syracuse this morning in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes, sir; I did.

Q. And you expect to return to Ithaca this evening?

A. Yes, sir.

Q. Approximately, how far is it from Ithaca to Syracuse?

A. It is about 55 miles.

91 Q. Did there come a time when a person purporting to represent the Standard Education Society of Chicago called on you?

A. Yes, sir.

Q. Approximately when was this?

A. The date I can give you exactly, because I have the papers. On November 1st, 1926.

Q. And what, as well as you can remember, was his story?

A. Previous to his visit I received a card from a Mr. Knapp, of Chicago, and the card reads something like this: That I had been selected as one of a few representative people to whom would be given a set of encyclopedias.

Q. Was that a card or a letter?

A. That was a letter with a card to be returned.

Q. I hand you a paper writing; can you tell me what that is?

A. That looks like the same letter that I received.

By Examiner AVERILL:

Q. It is a letter from whom to whom?

A. From Knapp to me.

Q. Was that the letter you were speaking about in your testimony?

A. Yes, sir.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 10."

Examiner AVERILL. The same will be received in evidence and marked "Commission's Exhibit No. 10."

92 (So marked.)

Examiner AVERILL. The letter purports to be from one, Charles E. Knapp, publicity manager, and the same is received at this time subject to Mr. Knapp's connection with the respondent being shown later.

By Mr. WINN:

Q. After that what happened, please?

A. That letter date is dated October 13, 1926. The night of November the 1st I received a telephone call from a man and he asked me to call and show me this set of books and explain the proposition. I told him to come on out. And there were two men, a Mr. Kaiser, and I did not remember the other man's name with him. And they went into the proposition, explaining that it would be given to me, but, of course, that they would expect me to subscribe to their renewal service over a period of 10 years at the rate of $6.95, I believe it was, for a year, which would make $69.50 total.

Of course, as an instructor, I did not have a lot of money, so they agreed upon a deposit of $9.50, and the balance to be paid over a period of months; I did not remember the time. Anyhow, I gave them a check for $9.50 that night and signed an agreement to pay the rest over a period of time. What influenced me, I don't know whether this will come in later, but how I happened to accept that proposition, although I am leery of such give-away propositions, but they used the names of several professors on the staff, whom I recognized as authorities.

93 Q. Can you recall their names?

A. One was Ellis; he is a professor in the agricultural college.

Q. Do you remember any other names?

A. Professor Karapetow.

Q. These men were, the names of these men were given to you as what?

A. As people who had bought this set and recommended it to their people. I understood at that time that Mr. Ellis had bought a set years before that and was to order a new set.

Q. Do you know of your own knowledge whether or not either Professor Karapetow or Mr. Ellis had authorized the use of their names?

A. No; they did not.

Q. Just a minute; the use of their names in recommending this work to other persons?

A. No; although later I did find out that Professor Karapetow did not.

Q. Do you know of your own knowledge as to whether or not they authorized the use of their names in recommending the work to other persons?

A. No.; I did not; I understood not; at the time I didn't know.

Q. Did you find out later whether or not they had authorized the use of their names in recommending the work?

A. I found out later that one did not recommend
94 it, and that was Professor Karaptetow. I didn't know about Professor Ellis.

Q. Did you purchase the ten years' renewal service?

A. I signed up for it.

Q. You signed a contract for it.

A. Yes.

Q. I hand you a paper writing; can you tell me what that is?

A. This is the contract, a duplicate order. This is not the one I signed for the set with the ten years' service.

Q. I notice on the margin of that contract a phrase, "30 days letter." Can you tell me what that means?

A. The original letter from Mr. Knapp stated that I was to give him a letter of recommendation or giving my opinion of this set of reference work. Mr. Kaisner when he called reminded me of this and said he would put on the margin "30 days letter" to remind me to send a letter giving my opinion of the set.

Q. Did you purchase the ten volumes of the Standard Reference Work and the extension service?

A. I entered into the agreement to purchase.

Q. To purchase them both for $59.60?

A. Yes. And the Standard Reference Work, I understood, was to be given to me; but I was to purchase merely the ten years' service.

Q. What did you base that understanding on?

A. My final decision to buy was upon the fact that
95 several men in Cornell University recommended it.

Q. What made you think that you were to be given the ten volumes free?

A. The recommendation of the 30 days' letter, and the fact that I was connected with Cornell.

Q. How did you find out that you were to be given the ten volumes free?

A. From the letter from Mr. Knapp and these gentlemen that called on me.

By Examiner AVERILL:

Q. You mean these statements that these representatives made to you?

A. Yes.

By Mr. WINN:

Q. Were the books sent to you?

A. Yes, sir. Although I never did receive them.

Q. You do not have them now?

A. No, sir; I have a receipt of their sending back.

Q. What did you do with them?

A. I returned them to the Standard Education Society without ever receiving them in my home.

Q. Have you been released from your contract with the Standard Education Society?

A. No, sir.

Q. Have you received any of the extension service for which you subscribed?

96 A. I received two, I think it was; two or possibly three copies of the extension service.

Q. Have you them now?

A. Yes, sir.

Q. You have not returned them?

A. I have not; no.

Mr. WINN. I think that is all the questions that I have to ask Mr. O'Banion, unless you have some.

Examiner AVERILL. No.

Mr. WINN. I offer in evidence the contract and ask that it be marked "Commission's Exhibit No. 11."

Examiner AVERILL. The same may be received and marked "Commission's Exhibit No. 11."

(So marked.)

PETER W. CLAASSEN was thereupon called as a witness and, being duly sworn, testified as follows:

By Mr. WINN:

Q. Where do you reside?

A. Ithaca, New York.

Q. You came to Syracuse this morning in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes, sir.

Q. What is your occupation in Ithaca?

A. Teacher.

97 Q. Where?

A. Cornell University, professor of biology.

Q. Did there come a time when you were called upon by a person purporting to represent the Standard Education Society of Chicago?

A. Yes. About, I believe about two years ago.

Q. When did you say it was?

A. Two years ago, I believe.

Q. Approximately two years ago. You don't recall the day of the year?

A. I don't exactly know.

Q. Do you recall whether it was in the fall or the spring or winter or in the summer?

A. I think it was in the fall.

Q. About two years ago?

A. Yes; the late fall, I think.

Q. Can you recall the story approximately that this representative told you?

A. Why, yes. There were two men came to see me on the supposition that they were giving away a set of encyclopedia of ten volumes, which was supposed, according to their story, to be worth more than one hundred dollars. I don't know the exact figures, but as I remember the total value, that the extension service was somewhere about $190, but I would not say that was it. I do remember that it figured to more than the cost of the Encyclopedia Britannica by far.

98 According to their story they were giving this away to a few individuals, provided they would subscribe to the loose-leaf service for the following ten years at a cost of $69.50.

Q. Was there any other service which you performed in exchange for the free offer?

A. Yes. Of course, you were to give them a recommendation of some kind.

Q. Did you subscribe to the service?

A. No.

Q. Do you recall the names of either of the representatives who called on you?

A. Not of the representatives. The card that I got was from Mr. Knapp, as I remember, of Chicago.

By Examiner AVERILL:

Q. Did you get a letter or card, or both?

A. Just a card, as I remember, with a reply card; that I am not sure of though; it may have been a letter.

Q. Look at this paper, Commission's exhibit no. 10, as it is marked, and see if that is similar to the letter which you received?

A. Yes; I believe that is the letter. I believe that is identical with the one I received.

By Mr. WINN:

Q. You are certain, or are you certain, as to the company which the agents purported to represent?

A. You mean the name of the company?

Q. Yes. The Standard Education Society.

99 A. Well, as I remember, that is the society that he represented; yes. He also showed me some advertising, supposed to be the covers of some of the magazines; it was either the Cosmopolitan or the Current History; one of those magazines which had a full page ad in it; and this was supposed to take the place of these advertisements—that is, giving away the sets and the receiving of the testimonials.

Q. And the name of the work, do you recall that?

A. No; I don't recall the name.

Q. Was it the Standard Reference Work?

A. Possibly it was.

Q. You don't recall whether the name of one of the men who called on you was Karsner?

A. No; I don't. I would recognize them if I saw them again, but I don't recall the name.

Q. Do you know whether or not this representative called on other members of the faculty at Cornell University? Do you know that of your own knowledge?

A. Yes; I know of my own knowledge. I know that they called on Mr. or Mrs. Ellis, or both, because I spoke to Mr. Ellis about it. I know that they called on Professor Raymond and Professor Mordoff.

Q. Do you know whether or not these men called on Professor O'Banion?

A. I don't know that of my own personal knowledge; no.

Q. Do you know whether or not the men who called

100 on you were the ones who were working in Ithaca in connection with this work at approximately the same time that you were called on, and were the ones who sold this

work to persons resident in Ithaca and other members of the faculty of Cornell University, in connection with which some difficulty or controversy was had between you and the Ithaca Chamber of Commerce?

A. If I understood your question aright, in connection with the Chamber of Commerce, did you say?

Q. Yes.

A. The only connection that it would have with the Ithaca Chamber of Commerce, or, rather, the Better Business Bureau, the method seemed to me so unfair that I wrote a letter to the Ithaca Journal News, in which I explained the method used by this company.

Q. Do you know that those same methods were used by these same men in Ithaca at approximately the same time upon other prospects?

A. Yes; I know that.

Q. And that was in connection with the same work?

A. With the same work; yes. Professor Bradley, however, bought a set from these men.

Q. Where is Professor Bradley now?

A. In Europe.

Q. On a leave of absence?

A. On a leave of absence.

Mr. WINN. I think that is all I have to ask Professor Claassen. Do you have any questions, Judge Averill?

101 Mr. AVERILL. No. I can't think of any that I have to ask.

(Adjourned to 1:30 o'clock at the same place.)

AFTERNOON SESSION, 1:30 O'CLOCK

MAY 11, 1929.

ZELLA P. SEIDERS was thereupon called as a witness, and having been duly sworn, testified as follows:

By Mr. WINN:

Q. You reside where?

A. In Ithaca, New York.

Q. You came to Syracuse from Ithaca in response to a subpoena directed to you by the Federal Trade Commission?

A. Yes.

Q. And you came from Ithaca today?

A. Yes.

Q. And you plan to return there today?

A. Yes.

Q. What is your occupation?

A. I am a bookkeeper at the J. B. Lang Co. garage.

Q. And what was your occupation in March and April of 1927?

A. School teacher at R. D. No. 1, Ithaca.
Q. Was your name Seiders at that time?
A. No.
Q. What was your name?
102 A. Parish.
Q. That was your maiden name prior to the time you were married?
A. Yes.
Q. Did there come a time when a person purporting to represent the Standard Education Co., of Chicago, called on you?
A. Yes.
Q. Approximately when was that?
A. Why, in the winter before—or rather the—I don't believe I can get any nearer than the winter of that year.
Q. The winter of 1926 and 1927, approximately?
A. Yes.
Q. Can you recall what his name was?
A. I think his name was Drury.
Q. What was his story as near as you can recall?
A. A card was sent to me at school, a small postal card, saying that if I was interested in receiving a complete set of the Standard Education Society books that I should say so by sending this card in; and there was an address on it, which I did, and in a few days the salesman called.
Q. I hand you paper marked "Commission's Exhibit No. 10", and ask if the letter which you received was similar to that letter?
A. I received a card.
Q. Was there a letter and a card or——
A. No; just a card.
103 A. That is all.
Q. And you were to send that card in?
A. Yes.
Q. You did not receive a blue-colored letter like this?
A. No.
Q. Go on, please.
A. A salesman in about two or three days called at my home and told me that I could have this set of books provided that I give a testimonial to the company as to my idea of the books and their worth. I agreed to this; and more than that, I agreed to purchase on a contract their loose-leaf ten years' service to keep these books up-to-date.
Q. Did the salesman say that you were to pay anything for the Standard Reference Work, ten volumes, or were to do anything in addition to the giving of the testimonial letter?
A. That was all for the books.

Q. That was for the books?
A. Yes,
Q. And then you agreed to purchase the service?
A. There was some down payment, the amount I can't just tell, and I commenced receiving letters.
Q. Do you know how much the contract was?
A. $69.50.
Q. Were the books sent to you?
A. Yes. And by the way; after I wrote this letter to them I boxed the books up and sent them back and they were accepted.
104 Q. They were accepted?
A. They were never returned to me.
Q. Did they continue to send you what you had according to your idea, purchasing, the extension service?
A. No; that ceased at the same time. I sent the service back at the same time and I never received any more.
Q. Did you notify the company of your desire to terminate your contract with them?
A. Yes.
Q. Can you tell me approximately what was contained in that letter? First, you do not have a copy of that letter?
A. No; I do not.
Q. Can you tell me approximately what was in that letter?
A. One clipping from the Ithaca Journal News written by Professor Claassen, saying that the books were not authentic material for collegiate students, that they were fit for only the grade schools. And I said that in looking through these books I had found also items that were not authentic, and for that reason I did not believe that they were, well, of the value represented, in so many words. Those words are not exact, of course.
Q. Had you written a letter of testimonial which was to be given in exchange for the books?
A. Yes.
Q. And had you sent that letter in?
A. Yes.
105 Q. And had that been done prior to your writing of the letter in which you wanted your contract for the purchase of the extension service cancelled?
A. Yes.
Q. Then, in effect, your two letters were contradictory, or first, rather, what was the effect of your first letter; your letter of testimonial?
A. It was that I could use the books very well in my work, which was at that time, grade.
Q. Did you afterward change that opinion?
A. No.

Q. However, you did return the books?

A. Yes; because I bought them in view of their helping me, and if they were as I thought, or if they contained as many errors all through the books as the few that I found, I did not care to study them.

Q. You did find errors in the books?

A. Yes; I can't be explicit now.

Q. Has your contract ever been rescinded on the part of the company?

A. You will have to explain that word.

Q. Have you been released from your contract?

A. No; but I have not heard anything from them since July of 1927.

Q. They have not written to you to advise you that you no longer are liable on the contract?

106 A. No.

Q. I hand you a paper writing and ask you if you can identify it—tell what it is.

A. A letter written to me on April the 18th, 1927. A letter asking, or rather——

Q. I don't care about that. Just tell me where it is from.

A. From the Standard Education Company of Chicago. Signed "L. A. Williams, collection manager."

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit No. 12."

Examiner AVERILL. Same received and marked "Commission's Exhibit No. 12."

(So marked.)

By Mr. WINN:

Q. Do you recall the title of the reference work that you purchased—of the reference work which was to be sent to you free?

A. No more than the Standard Education—the Standard Education Society.

Q. It was the Standard Education Society with which you were dealing?

A. Yes.

Mr. WINN. I can't think of any further questions, Judge Averill. Do you have any that you wish to ask?

Examiner AVERILL. No, sir.

107 ELEANOR BARNARD was thereupon called as a witness and having been duly sworn, testified as follows:

By Mr. WINN:

Q. Mrs. Barnard, where do you reside?

A. On the Trumansburg Road in Ithaca at present.

Q. And you came from Ithaca today in response to a subpoena sent to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes.

Q. You came from Ithaca today?

A. Yes.

Q. And you plan to return to Ithaca today?

A. Yes.

Q. Did there come a time when you were called upon by persons purporting to represent the Standard Education Society of Chicago?

A. Yes.

Q. Can you tell me how this came about?

A. First, by a letter from the Standard Education Society.

Q. Was a letter from the Standard Education Society?

A. Yes.

Q. I hand you a copy of a letter and ask you if the letter you received was similar to or identical to that, except for the address, of course?

A. Yes; the body of the letter was the same.

Examiner AVERILL. And that refers to an exhibit
108 heretofore marked "Commission's Exhibit No. 10."

By Mr. WINN:

Q. And in response to this letter you did what?

A. I returned a card that was enclosed, just as they said, to verify the address and the initials.

Q. Then what happened?

A. A man called.

Q. What was his story?

A. Well, he said that in order to introduce the books that they were making a special offer, giving a few sets of the books away to people who would give them a recommendation, and by the loose-leaf service that they were offering, which, of course, made an up-to-date encyclopedia, instead of making a new edition from year to year, why they put in a loose-leaf system.

Q. Did the agent tell you that the company made a general proposition of giving its books away in exchange for letters of recommendation?

A. No. The agent told me it was a set that sold for usually, I don't remember the price, but I think it was a price that compared with other popular encyclopedias on the market, and they were making this offer just as an introductory offer and to get a limited number of sets in Ithaca.

Q. What was the price at which he offered the loose-leaf extension service to you?

A. If I remember right, it was about $65.00. I don't remember the exact figure.

109 Q. Do you recall the name of the agent?

A. Yes; his name was Drudy.

Q. Did you sign an order for the extension service?

A. Yes; I did.

Q. Will you tell the circumstances, please, attending your signing of that order?

A. I was a little reluctant to be signing the order, about Mr. Barnard knowing about it, and he made the proposition that I need not pay any money down and that it need not become an order until a down payment was made; and he would wait until he heard from me, sending him a check for five dollars, and giving me authority to forward the books after Mr. Barnard returned. Before Mr. Barnard returned the books were left at my front door by an expressman. And I think Mr. Barnard came a day or so after that, and we decided that we did not want the books, and we shipped them back with a letter explaining that they were not what we expected them to be, and we did not care to keep them.

Q. Have you a copy of that letter?

A. I think I turned all of that over to Mr. Smith. No; I don't believe I made a copy of that letter.

Q. Did you tell the company when you wrote that letter, in that letter, that the books had been represented to you as a gift contingent upon your purchase of the extension service?

A. I don't know; I don't recall that. That is, I would not want to say for sure.

Q. Have you been released from your contract by the company?

110 A. Not to my knowledge.

Q. Did you receive any of the extension service pamphlets?

A. Why, yes; I did.

Q. Have you those now?

A. No; I have not.

Q. Where are they?

A. I returned them.

Q. You returned them to the company, too?

A. To the company.

Mr. WINN. I think that is all the questions that I have.

By Examiner AVERILL:

Q. After you returned the books and wrote them as you have stated, did you hear anything from the company?

A. Yes; I had a letter to the effect——

By Mr. WINN:

Q. First, have you that letter?

A. I think I turned that over to Mr. Smith.

By Examiner AVERILL:

Q. Did they acquiesce in the return of the books, or did they protest against it, or what?

A. They protested. I sent the books back by express, and the company received them, but wrote—just a minute, I think they sent me some little forms reminding me that payment was due on them; and after receiving a few of them I wrote them and told them that I returned the books and wrote them at the time, and got a letter in reply to the
111 effect that it was, that I had given them an order and that the contract could not be broken, or words to that effect.

DONALD W. CHASE was thereupon called as a witness, and, having been duly sworn, testified as follows:

By Mr. WINN:

Q. Where do you reside?

A. 123 Loma Avenue.

Q. In what city?

A. Here in Syracuse.

Q. Did there come a time, Mr. Chase, when you were approached by a person purporting to represent the Standard Education Society of Chicago?

A. Yes.

Q. Approximately when was that?

A. As near as I can remember, September 1925.

Q. What was his story, Mr. Chase.

A. As I recall, the fellow's name was Knapp, and he showed me a list of some very prominent people here in Syracuse, and I think there were about two dozen, all told, and I had been among the chosen few to have a great favor conferred upon, that was, that they were going to give me something or other in the way of Reference Works, and I was to recommend it to others, and I was to receive a set of, I supposed, up-to-date works of Mary Roberts Rinehart and another set of what was called the "Pocket University" and there was to be an extension service to keep
112 the reference work up to date.

Q. You said something in the nature of a reference work. Could you be a little more explicit than that?

A. Why, yes; it was to be complete, and proved to be about ten volumes; I believe it was of encyclopedia.

Q. Do you recall the name of it?

A. It was a Standard Reference Work, or, anyway, it was put out by the Standard Education Company, of Chicago.

Q. You mean that you were to receive the Standard Reference Work and the pocket university and Mary Roberts Rinehart's works and the loose-leaf extension service?

A. Yes.

Q. Will you carry on from there, please.

A. Well, this was represented to me as being a great bargain; and I happened to be real busy at the time, and this fellow, being a real high-pressure salesman, sort of inveigled me into this whole thing in a whale of a hurry. And, of course, being the prominent names of these other men, seeing the names of these men, sort of led me to believe that this proposition must be a pretty good thing. And after I had gone through with this, that is, signed an order or something to that effect, I went home and told my wife what a wonderful bargain I thought I was getting; and come to investigate, a good encyclopedia can be bought for a whale of a lot less than they were going to charge me for this.

Q. You were talking about the proposition. Just
113 what was this proposition?

A. Why, as I recall it, I was to pay for the extension service, and for the sake of recommending it—he told me what a wonderful proposition it was—to my friends, why, I was to get it for a greatly reduced price.

Q. That was the extension service?

A. Yes. And Mary Roberts Rinehart's Works and the pocket university was included.

Q. Were you going to buy the Standard Reference Work?

A. Why, something to that effect, as I recall now. I don't just—it is such a long time ago, it is rather vague in my mind, but it was something to that effect; that the reference work was to be at a reduced price, and the extension work, the extension reference that came along to keep it up to date, was to be charged and paid for at a certain rate—I have forgotten just what it was.

Q. Do you recall the total price?

A. The total price was approximately $90.00.

Q. And that total price of approximately $90.00, as you understood, covered the extension service and the reference work and the Rinehart's Works and the pocket university, or did the salesman tell you that you were buying only the reference work or that you were buying only the loose-leaf extension service, or that you were buying the reference work and the loose-leaf service? In other words, what did the salesman tell you that you were buying?

114 A. As I recall, he was most of the time dwelling on this loose-leaf service.

Q. Did you understand that you were buying the loose-leaf service?

A. That I eventually was going to pay on some sort of a basis; yes.

Q. Did you understand that included in the price which you were to pay, approximately $90.00, you were also paying for the other books that you were to receive?

A. No, sir; I did not understand that.

Q. Did you figure that you were not going to pay for the other works?

A. I figured that approximately they were giving that away.

Q. The salesman told you just what, as near as you can remember?

A. Well, as I have already stated.

Q. I wonder if you would mind saying it over again in a few words. That you were to buy what?

A. The reference works; that is, keep it up-to-date works; the extension service.

Q. You were to buy the extension service?

A. Yes.

Q. What about the reference works; the other books?

A. The reference works—those were, I believe, part of the gift transaction.

Q. They were to be given to you in exchange for your letter?

115 A. Yes; something of that sort. I don't recall as I ever sent a letter to them. I believe they wrote and asked me for a letter.

Q. Did you receive the books?

A. I received them; yes.

Q. Have you them now?

A. No, sir.

Q. What did you do with them?

A. Sent them back.

Q. Did you receive any of the extension service for which you subscribed?

A. Yes.

Q. Have you that now?

A. I put that in a loose-leaf binder that came with the set, and when I returned the books I sent that back too, all together. By the way, when I received this set of books the thing that turned me on this transaction was the fact that several of these books were far from new.

Q. You mean they appeared to be second-hand?

A. They appeared to be soiled and looked as if either they had been badly shopworn or warehouse worn, or something; they didn't have a new appearance.

Q. Have you been released from your contract?

A. I don't know as there ever was a contract.

Q. Did you sign a piece of paper?

116 A. I signed some sort of an order or something.

Q. Have you been released from that order?

A. No.

Q. The company has never written to you and told you that you did not owe them any money?

A. No. The company has written to me and told me repeatedly that I did owe them money.

Q. You never wrote them and told them that you didn't owe them any money?

A. Oh, no.

Examiner AVERILL. I have Commission's exhibits 1 to 12, inclusive, in my custody. Mr. Winn, as I understand, you have no further witnesses at Syracuse?

Mr. WINN. That is right.

Examiner AVERILL. We therefore will adjourn, to reconvene at Cleveland, Ohio, on Monday, May the 13th, at ten a. m., at room 501, United States Post Office.

117 Docket No. 1574

CLEVELAND, O., *May 13, 1929.*

Met pursuant to adjournment, 10:00 o'clock a. m.

Before: EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn, for the Commission. Attorneys for respondent not present.

ELEANOR R. WEMBRIDGE was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Examiner AVERILL:

Q. State your name, please.

A. Eleanor Rowland Wembridge.

Q. You are the Mrs. H. A. Wembridge mentioned in the subpena?

A. Yes; those are my husband's initials.

Q. I notice the subpena is addressed to 1877 East 75th Street, Cleveland, Ohio. At what point did you receive it?

A. I received it at 247 Arundel Road, Rocky River, Ohio, where I have lived for a year and a half. It was forwarded.

Q. So that you came to this hearing today from 247 Arundel Road, Rocky River, Ohio?

118 A. Yes.

Q. About how far is that from here?
A. Oh, about fifteen or twenty miles. It is on the way toward Lorain.
Q. And you came here in obedience to this subpena?
A. Oh, yes.
Examiner AVERILL. You desire to have this witness excused?
Mr. WINN. Yes.
Examiner AVERILL. You are excused.

MARION J. BEITLER was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Please give your full name to the reporter, Mr. Beitler.
A. Marion J. Beitler.
Q. And you reside where, Mr. Beitler?
A. Damascus, Ohio.
Q. And you came to Cleveland from Damascus in response to the subpena directed to you by the Federal Trade Commision?
A. I did.
Q. How far is it from Damascus to Cleveland?
A. About seventy miles.
Q. And you left Damascus this morning?
119 A. Between six and six-thirty.
Q. And you expect to return to Damascus today?
A. I do.
Q. Did there come a time, Mr. Beitler, when a man purporting to represent the Standard Education Society, of Chicago, called on you?
A. Yes, sir.
Q. Approximately what time was that? Approximately when?
A. It was about a year ago. It was along towards the end of March (examining card).
Q. In what year?
A. 1928.
Q. Will you tell what his story was, as nearly as you can recall it?
A. Well, he was putting out this encyclopedia. He claimed, the way I understood it, they were in some way affiliated with the Chicago public schools, and that the schools had these books, and that they were putting these out to a few select ones out over the country, so that when they started their advertising campaign through the magazines they would have some in each community to refer them to. His price was a special inducement to get a certain few to get these sets, and with the encyclopedia they were supposed to keep that up for ten years. Every six months

120 you would get a kind of a supplement, and with that they had a choice of several other sets of books. I got the set by Booth Tarkington, and one by Mary Roberts Reinhart.

Q. Did the agent tell you that you were purchasing these sets of Mary Roberts Rinehart and Booth Tarkington?

A. No; they were supposed to be a gift on a special inducement to help along the sale of the encyclopedia.

Q. You said a moment ago, as you understood it, this organization was in some way affiliated with the Chicago schools. Upon what did you base that understanding?

A. Well, he said they had these sets in the Chicago public schools, or were making them up for them.

Q. You base it on what he said?

A. On what he said.

Q. What was the purchase price at which the encyclopedia and the extension service was offered to you?

A. $89.00.

Q. Did the agent tell you that was the usual price at which the encyclopedia set was sold?

A. No; that was a reduced price; the regular price would be $145.00.

Q. Did the books come to you, Mr. Beitler?

A. They did.

Q. And do you recall the name of the work?

I never looked at them.

121 Q. I hand you a paper to refresh your memory.

A. That might be it. I never looked at them. I got them for the children, and they looked at the pictures.

Q. The company has not released you from your contract?

A. Not yet.

Q. You have been paying the purchase price right along?

A. Yes.

Q. Do you recall the name of the agent, Mr. Beitler?

A. No; I don't. I tried to find the receipt that he gave me for the nine dollars that I paid down, and I haven't been able to locate it.

Q. Mr. Beitler, I hand you a paper writing. Can you tell me what it is?

A. It is a statement of the balance of my account.

Q. From whom did you receive it?

A. From the Standard Education Society.

Q. And you are the M. J. Beitler mentioned thereon?

A. I am.

Mr. WINN. I offer this paper writing in evidence, and ask that it be marked "Commission's Exhibit No. 13."

Examiner AVERILL. The paper will be received and marked "Commission's Exhibit 13."

Mr. WINN. That's all the questions I have.

122 MAGDALENE S. WEBER was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.

A. Magdalene S. Weber.

Q. And you reside where?

A. Canton, Ohio.

Q. You came from Canton to Cleveland today in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes.

Q. And you expect to return to Canton this afternoon?

A. Yes.

Q. How far is it from Canton to Cleveland?

A. Sixty miles.

Q. Did there come a time, Mrs. Weber, when a representative, or a person purporting to represent the Standard Education Society of Chicago, called on you?

A. Yes.

Q. Can you tell me approximately how that came about, and what happened?

A. I had a letter from the Standard Education Society offering me a set of books, the encyclopedia, free, absolutely free, and all I was to do was to sign a card and mail
123 it to them, and I would receive the set. Their representative, Mrs. Bell, then called on me and said that they would give me the set absolutely free, but I was to pay ten dollars for packing and delivery, and that if I did not like the books I could return them and they would return the ten dollars.

Q. I hand you a paper writing. Can you tell me what that is?

A. Well, that is the letter I received.

Q. You said a moment ago that you received it from the Standard Education Society.

A. Well, I guess it was from Mr. Knapp. She spoke of the Standard Education Society; that is what made me think it. It was from Mr. Knapp.

Q. And this is the letter in response to which you sent the card?

A. Yes. I had the enclosed card, and I just signed that and returned it to them.

Mr. WINN. I offer this paper writing in evidence, and ask that it be marked "Commission's Exhibit No. 14."

Examiner AVERILL. The paper writing will be received and marked "Commission's Exhibit No. 14."

Q. Now, if you will continue, Mrs. Weber, please?

A. I asked her then to tell me how many sets they were giving away, and she said four sets. I asked for the
124 names of the other people to whom they were giving them, and she gave me the names of the other people. So I thought that I would give her a check for ten dollars, but I would date it four or five days ahead to give me time to write to the Standard Education Society to see whether she really was their agent. Then I immediately wrote to the Standard Education Society and told them about their agent, Mrs. Bell, and said if she really was not their agent they should wire me at my expense.

Q. Did you make a copy of the letter that you wrote to them?

A. No; I didn't make a copy of that letter.

Q. Either the Standard Education Society has it, or it is lost?

A. Yes; they have it or it is lost.

Q. Approximately what was the date of the letter?

A. It was early in 1926. I really couldn't say whether it was February; it probably was in February or March; I really don't know just what the date would have been. Oh, when I wrote to them. It was after she had been to Canton; I can't say just when she came to Canton, how long after I got that letter.

Q. But it was after January 2nd?

A. Yes; it was after that; five or six weeks after that. I really have forgotten just when she came to Canton; it didn't seem very long after I had sent in my card, though. I sent in the card soon after I got that letter.

125 Q. It was sometime after the date on the letter marked "Commission's Exhibit 14"?

A. Yes.

Q. And in that same year?

A. Yes.

Q. You wrote to them, and if there is anything else you have to say in regard to what was in the letter that you wrote to them, you may state it.

A. I told them that their agent, Mrs. Bell, had been to see me in regard to sending me a set of books free, and that I had given her a check for ten dollars, but I had dated it ahead, thinking that perhaps she was not their agent and that I would stop payment on the check if she was not their true agent, and that they should wire me at my expense if she were not their true agent. It was nearly a week before they wrote to me, because I know it gave her ample time to cover up.

Q. They did write to you?

A. Yes; they wrote me.

Q. I hand you a paper writing and ask you if you can identify it?

A. Yes.

Q. Tell me what it is.

A. Yes; this is the letter that I received from the Standard Education Society.

Q. In response to your letter that you just told us
126 about the contents of, in substance?

A. Yes; this is in response to that letter. I see this date, January 27th, so I must have written it in January.

Mr. WINN. I offer this letter in evidence and ask that it be marked "Commission's Exhibit 15."

Examiner AVERILL. The same will be received and marked "Commission's Exhibit No. 15."

Q. By this time, then, what had happened, if anything?

A. Well, we waited for the books to come and they didn't come, and a number of us went down to see, and I found there were others besides the names she mentioned that had given her ten dollars, and we went down to the Better Business Bureau and told them about our troubles and experiences with the Standard Education Society.

Q. Did you again write to the Standard Education Society?

A. No; I didn't; but one of the other ladies wrote to them again. I didn't write to them again.

Q. I hand you a paper writing and ask you if you can tell me what it is?

A. I don't remember receiving this.

Examiner AVERILL. Well, who is it from and who is it supposed to be addressed to?

The WITNESS. It is addressed to me from Charles E. Knapp. Well, I do recall that now, when I saw that word there, "victimized by an imposter." I remember that name.

127 Q. You did receive it from Mr. Knapp?

A. Yes; I did.

Q. Would you say after reading that letter that you had written a subsequent letter to the Standard Education Society?

A. Yes; I must have written to them again. I had forgotten about that.

Q. Do you recall, in fact, the substance of the letter?

A. No; I know several of us talked about it, and I think several of us wrote to them and said that the books hadn't come.

Q. Of course, you wrote that letter subsequent; if you wrote that letter, it was subsequent to the letter that you had

received from the Standard Education Society, and which is marked "Commission's Exhibit 15?"

A. Yes; after I received that.

Q. You wrote this other letter?

A. Yes, yes.

Mr. WINN. I offer this letter in evidence and ask that it be marked "Commission's Exhibit 16."

Examiner AVERILL. The paper will be received and marked "Commission's Exhibit 16."

Q. Was anything said to you by the agent with reference to paying additional sums of money?

A. Well, I think it said something in that letter——

128 Q. I mean by the agent?

A. No; no additional sum at all.

Q. The books were to be given to you?

A. Absolutely free; the set was to be given to me.

Q. And what was the ten dollars to cover?

A. The cost of packing and delivery.

Q. Were the books sent to you?

A. No.

Q. Did you receive your ten dollars back?

A. No.

Q. Have you given me the name of the agent?

A. Mrs. Bell was the agent. Her name is mentioned there. The Standard Education Society acknowledged her as their agent.

Q. Were any representations made to you as to the price of this work?

A. Well, it was sixty-some dollars. I have forgotten just what it was.

Q. And that was the ordinary price of the work?

A. Yes; that was the regular price, I think.

Mr. WINN. I think that is all the questions I have to ask of Mrs. Weber.

Examiner AVERILL. I have none.

129 ONOR O. HARRIS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by MR. WINN:

Q. Give your full name to the reporter, please.

A. Onor O. Harris.

Q. You are also Mrs. A. J. Harris?

A. Mrs. A. J. Harris.

Q. And you reside in Cleveland?

A. Lakewood; 1547 Lauderdale Avenue.

Q. And you came to this hearing today in response to a subpena directed to you by the Federal Trade Commission?

A. Yes.

Q. Did there come a time, Mrs. Harris, when a person purporting to represent the Standard Education Society of Chicago, called on you?

A. Yes, sir.

Q. Approximately when was that?

A. In December 1925.

Q. Can you tell us how that came about?

A. First, the post card came and then a letter; the letter offering me a set of Standard Reference Works.

Q. I hand you a paper writing, Mrs. Harris. Can you tell me what that is?

A. This is the letter I received telling me that I
130 might have this set of books, original owners list.

Q. And it is directed to you from——

A. Directed to me from Charles E. Knapp, publicity manager.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 17."

Examiner AVERILL. The paper will be received and marked "Commission's Exhibit 17."

Q. Then, what happened?

A. Then, a representative called, a Mr. Murphy, and I was not going to admit him, until he told me this was absolutely a gift, and they wanted to place one in each of the better homes in each locality, and they wanted it left on the table or in sight so that our friends calling might see them, and naturally would say, "I see you have an encyclopedia, and I know you would tell them about the work and how well pleased you were and what you learned from them." And I thought that was strange, that they would be giving something for nothing; but he said, "It is true, that is our way of advertising." I admitted him to the house finally and he talked about this reference work; what a wonderful work it was; it was to be absolutely free. He promised me a set of Kipling and I told him I had no place to keep them and he said they would give me a small book case that would just carry these books, so as to keep them neat
and clean. They were interested in keeping their
131 books nice. He then told me—asked me if I knew anyone else who might be interested and I gave him the names of several prominent club women. He told me that the judges—some of the judges had bought these books, and some of the prominent club women had, and gave me the names, which I do not remember.

Q. Did you sign a contract to purchase these?

A. Not that I know of. I signed something; that was a card, as I remember. I don't ever recall signing a contract or hearing one word spoken about a contract. When Mr.

Murphy was ready to leave he asked me to give him five dollars to pay packing and shipping charges.

Q. You did, however, sign something?

A. I signed something, because he asked me to sign that so that they would have the proper address to mail these books to, that's all.

Q. When did you discover that you would have to pay more than five dollars?

A. Just shortly after he left I found a paper on the table. I had been called to the telephone; my husband called me, and when I went back I found a paper on the table, and read that and immediately wrote the company.

Q. I hand you a paper writing; will you tell me what it is?

A. This is the contract which I was supposed to have signed, and I did not see this, as I remember, until
132 after I went back; I saw nothing but a card.

Q. That is the piece of paper that you found on the table?

A. Found on the table, and then wrote to the company in regard to this piece of paper.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 18."

Examiner AVERILL. The paper will be received and marked "Commission's Exhibit 18."

Q. After you discovered it you did what?

A. I wrote immediately to the company, telling them that I did not know I had signed a contract, and that I was not going to—it seems to me there was a letter came from them telling——

Q. I hand you a paper writing and will you tell me what that is?

A. This is a letter, a reply, evidently, to the order that the salesman sent in.

Q. And was received by you?

A. Received by me, telling me about this money that I was to pay.

Q. And it purports to be from what?

A. Standard Education Society.

Mr. WINN. I offer this in evidence, and ask that it be marked "Commission's Exhibit 19."

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 19."

Q. You were mentioning a letter that you had
133 written, just a moment ago. Was this letter written before or after you received the paper which has just been introduced in evidence as Commission's exhibit 19?

A. Well, as I remember it now, I sent them a letter telling them that apparently I had signed a contract, but didn't

know I had until I had found this paper. Then a letter came telling me I had signed the contract—telling me that I could not refuse to take those books.

Q. Then practically all that you remember of the letter which you wrote to them was that you didn't know that you had signed a contract?

A. And that I was not in position to pay the price they requested, simply could not do it; I would not bind myself to pay any amount at any time.

Q. Did you make a copy of that letter?

A. I did not.

Q. And you sent it to the company?

A. I sent it to the company.

Q. I hand you a paper writing and ask you to tell me what that is.

A. Well, I had requested a cancelation of that order, because I didn't know I had signed it, and they told me that was a noncancelation contract that I signed; and they told me they appreciated my letter, and so forth; but I had to pay it anyway.

134 Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 20."

Examiner AVERILL. The paper in question will be marked "Commission's Exhibit 20" and received in evidence.

Q. I now hand you another paper writing and ask if you can identify that—tell me what that is.

A. Well, this is the letter in regard to the shipment from the Standard Education Society, dated January 18th, received by myself.

Q. Directed to you?

A. Directed to me.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 21."

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 21."

Q. After you received the communication marked "Commission's Exhibit 20", did you again write to the company?

A. I did.

Q. And did you make a copy of that letter?

A. I did not.

Q. Can you tell us approximately what was in it and approximately the date of it?

A. I simply could not and would not bind myself to pay any certain amount of money.

Q. In other words, it was a reiteration of your first letter?

135 A. Yes.

Q. I hand you another paper writing, and can you tell me what that is?

A. I think then I sent them a letter that I would pay it as fast as I could. They frightened me. I didn't know the Better Business Service at the time, and they frightened me with this, and I thought I had better pay it and get it off my mind, as long as I had to pay it and I signed the contract, and I couldn't do anything but pay it, and I sent them as fast as I could, because I didn't want these letters, and please not send them, because I would send money just as fast as I could send it to them. That is as nearly as I remember now—to please not bother me with these letters.

Q. And then you received this letter?

A. Then I received this letter.

Q. Dated January 26, 1926?

A. Yes.

Q. And you are the Mrs. O. Harris to whom it is addressed?

A. Yes. It should be Mrs. Onor Harris or Mrs. A. J.

Mr. WINN. I offer this paper in evidence and ask that it be marked "Commission's Exhibit 22."

Examiner AVERILL. The paper in question, consisting of two sheets, will be received in evidence, and marked "Commission's Exhibit 22."

Q. Has the company released you from your contract?

A. Well, it is all paid.

136 Q. You have paid for the contract, paid for the books entirely?

A. Yes.

Q. How much did you pay, approximately?

A. $69.50, less, I believe, $4.03 discount, and I forget what the discount was the other time; twice, it was, for the discount.

Q. That was for accelerated payments?

A. Yes. The rest of it was all paid. But they kept on writing me about checks that I had sent them and that they didn't receive, and when I wrote them and told them I had sent this money to Mr. Mehaffey, their sales manager——

Q. Did you have any conversation with Mr. Mehaffey after the agent had called on you?

A. Several times.

Q. What conversation did you have with Mr. Mehaffey?

A. Mr. Mehaffey told me in the office while we were waiting at the Better Business Service, if they had promised me a bookcase he would see then that I had that bookcase, if Mr. Murphy had to pay every penny of it; he would also see that I had the right binding on my books instead of this inexpensive binding that they had sent me, after they had showed me a good binding. He showed me in that office the exact binding I was suppose to have had on a set of

O. Henry or Kipling, a lovely dark red binding, and then they sent an inexpensive one. He told me all this,
137 and said he would see I had everything that Mr. Murphy promised me, if I would only tell him without going into Mr. Armstrong's office, and I told him I would be glad to tell him everything in that office, and not before. He then said he would see that the payments were made as easy as possible. But I didn't take advantage of that; I paid as fast as I could. And I gave him ten dollars before he left here, and that was supposedly lost, and then Mr. Knapp wrote me and told me that they had no reason to doubt Mr. Mehaffey, as he was absolutely honorable, and would I just have that check cancelled and send another, which I refused to do.

Q. Who was Mr. Mehaffey?

A. Mr. Mehaffey was sales manager for the Standard Education Society.

Q. And the conversation that you had with him at the Better Business Bureau was in his capacity as sales manager?

A. As sales manager, and we were called there by the Better Business Bureau, both of us.

Q. I hand you a paper writing of two sheets; can you tell us what that is?

A. This is the letter in regard to the lost ten dollars which I had sent to Mr. Mehaffey while he was in Cleveland.

Q. And who is the letter from?

A. From Charles A. Knapp.

Q. To whom?

138 A. To Mrs. A. J. Harris.

Q. And that is you?

A. Myself.

Q. And what is the date of the letter?

A. March 9, 1926.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 23."

Examiner AVERILL. The paper in question, consisting of two sheets, will be received in evidence and marked "Commission's Exhibit 23."

Q. Did Mr. Murphy make any representations to you as to the modernness of this work, as to the modernness of the ten volumes which you were to receive free?

A. I don't recall that. He spoke of it being the only all-American encyclopedia.

Q. Did Mr. Murphy state that it was the general practice of the company to give away these encyclopedias?

A. He did.

Q. And that they did it in practically every instance?

A. He told me it was a free gift, and that they were doing that in each—wanted to do that in each locality in a better home in each locality as an advertising scheme.

Q. And the purpose of the advertising was in order that they might get other names to whom to give free sets?

A. Yes, sir. No; not to give free sets; no; that is
139 why they were selling them.

Q. Then was it the general practice of the company to give away free sets?

A. Only to those who were advertising for them.

Q. Did you understand what the usual price of the set was, or did the agent tell you what the usual price of the set was when it was actually sold?

A. I don't remember him naming a price.

Q. Did he say whether or not the price at which the set was usually sold was more or less than $69.50?

A. I don't recall him naming a price at any time.

Q. Of course, from your testimony, you didn't understand that you were even to pay $69.50?

A. No; and I don't think he said anything about any loose-leaf extension service to me at all.

Mr. WINN. That is all I have, unless you have some questions.

Examiner AVERILL. No, I haven't.

EMMA J. SHULTZ was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.

A. Emma Jane Shultz.

140 Q. And you reside where?

A. 3458 Northcliff Road, Cleveland Heights.

Q. In Cleveland?

A. Yes.

Q. And you came to this hearing in response to a subpena directed to you by the Federal Trade Commission?

A. Yes.

Q. Did there come a time, Mrs. Shultz, when a person purporting to represent the Standard Education Society of Chicago called on you?

A. There was.

Q. And approximately when was that?

A. Well, I should think it must have been about '26. The only reason I have for that is, I was staying with this neighbor's little child, who was just about six months old, having its first toys, and my daughter told me that child would be four this fall, and it was the summer before that; going back, it would be '25 or '26, I should judge, as near as I can tell.

Q. And it was in the summer?

A. Yes; right at the latter part of the summer.

Q. Now, will you tell us, please, how this person happened to call on you, or what preceded it, that you know of?

A. Well, I received this letter, I presume just like the rest did, stating this Standard Education Society were try-
141 ing to secure the services of a number of persons—it seems to me they said about twenty, but a representative in the different localities, and my name had been handed them as that type of person, and they wanted to give a set to each of these representative people, and after they perused them and studied them for a few weeks, perhaps three or four, then they would ask us to write a letter of recommendation, and also ask us to talk to our neighbors and represent the book. That was the sort of a thing we were to do.

Q. Did you understand that you were to purchase the books?

A. Not at all; not at all. I was out to a neighbor's, as I intimated a while ago, keeping their child; it was only a few doors; I couldn't leave the child to go home. This agent called at my number, 1121 East 125th Street, and my daughter called me up by phone and said there was a man there from this book society, and she was sending him over. Our bell rang soon, and he came in, a very affable, splendid talker, very pleasant. Of course, he handed me out a little "taffy"—they always do—about my name being given to them as the type of woman they wanted. I said, "I don't think so. I think that is too much of an undertaking for me at my age." I said, "My children are all grown and gone from my home. I couldn't undertake anything like that, I don't think, at all." So I just wanted him to excuse me. Oh, no, he wasn't willing to do that. I said,
142 "Now, you are sure I won't be involved financially in any way? I am past working age; I am not able to undertake any obligation." "Nothing at all but five dollars", and that was to pay the packing and shipping. They had to come to me by parcel post, four copies I was to get, and the rest were loose-leaf that I was to get, until I had this whole set. $62.00 I think was the price he made to me. That would be the real value, but they were giving it to me. I said, "That looks like a big gift." He said, "Yes; it is, but we think you will appreciate it, and you will do what we are asking you to do, write us this letter." Well, I had to call my daughter and tell her where to get the five dollars, and she says, "Now you ask him again if that's all you have to pay." So I turned around from the telephone and said, "Now my daughter is warning me again to ask you if the five dollars is all, and that I will not be involved any more."

He said, "Absolutely so." So I told her where to get the five dollars, and then when she went and got that, she repeated that again, and said, "Now I want to be sure again, and I want to ask you if this five dollars will be all my mother will be expected to pay. She is too old a woman to have anybody take any advantage of her, and I don't want it." And he assured her.

Examiner AVERILL. That was in your presence and hearing?

143 The WITNESS. No; she was in my home and I was at the neighbor's home, but I couldn't leave the baby to go after the money, and I telephoned here where it was. She would have been here today, only she was out of the city over the week-end. In a few days, then, this package—I supposed it was the four books—was delivered by the expressman. It was sent to me by express, and I said, "Why, they were not to come by express; they were to come by parcel post, and I paid the man five dollars." And right then and there I said it was a crooked thing and I will have nothing more to do with it.

Examiner AVERILL. When you said you paid the man five dollars, do you mean the expressman five dollars?

The WITNESS. No, no; this agent there at this home where I was staying. But I did sign something, I suppose, like those other women signed that just preceded me here. Of course, with this baby, I wouldn't be paying attention to that, and I didn't go over a long contract; I wouldn't have understood a great deal, and I supposed it was a special contract for these people they were engaging to receive and recommend their books. I just put too much confidence in him, you see, like we do often.

Q. Did the books come?

144 A. These four came, as I said, by the expressman, and I went on to tell him they were not to come by express.

Q. Did you open the books?

A. Indeed, I didn't. I didn't touch them. I didn't know there were four books in that; no, I said the package looked about like that, and I supposed they were the four to come.

Q. In other words, you refused to accept them?

A. I refused to accept them.

Q. Mrs. Schultz, I hand you a paper writing which is marked "Commission's Exhibit 17", and which is a letter addressed to Mrs. Harris. Will you look that over and tell us whether or not that is approximately what the letter which you received contained?

A. It is like it; it was the same thing. They wouldn't write different, I suppose, for different people. Anyhow, it sets forth the same things that my letter did.

Q. And it was the Standard Education Society?
A. Yes.
Q. And the books were the Standard Reference Works?
A. Well, I couldn't say they were. The agent said they were from that society.
Q. That is what the books were to be, according to the agent?
A. Yes. He said he would tell them the books were refused, but I wrote right away, myself. I didn't want just to depend on them—and told them why I wouldn't receive them. I had paid my five dollars to have them
145 sent by parcel post, and when he came to collect for express I resolved then to have no further to do with them.
Examiner AVERILL. Did you ever get a reply to that letter?
The WITNESS. Oh, yes; indeed. I have been getting replies ever since.
Q. Have you been released from your contract?
A. Well, no. I repudiated it, that's all.
Q. Have you paid anything more on account of it?
A. No.
Q. Nothing other than the five dollars originally?
A. That's all.
Q. Did you receive that five dollars back?
A. Oh, no.
Q. Do you recall the name of the agent who called on you?
A. No; I wouldn't know that at all.
Mr. WINN. That's all the questions I have to ask.
Examiner AVERILL. That's all. We will now adjourn for lunch until two o'clock p. m.
(Adjournment taken until two p. m., same day; whereupon the following proceedings were had:)

146 Mrs. J. R. ANKENBRANDT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name, please, to the reporter.
A. Mrs. J. R. Ankenbrandt.
Q. And you reside in Cleveland?
A. Yes; 16626 Euclid.
Q. And you came here today in response to a subpena directed to you by the Federal Trade Commission in connection with the Standard Education Society?
A. I did.
Q. Did there come a time when a person purporting to represent the Standard Education Society, of Chicago, called on you?
A. Yes.

Q. Can you tell me approximately when that was?

A. About late in the fall of 1925.

Q. Can you tell me anything that happened prior to his visit to you in connection with this organization?

A. I received a letter.

Q. I hand you a paper writing and ask you to tell me what it is?

A. That is a letter I received from Chicago in regard to this matter of selling some books.

Q. And what is the date on it?

A. October 22, 1925.

Q. Now, I notice that it is addressed to Mrs. J. R.
147 Ankerbrandt. That is you, but the name is misspelled?

A. Yes; we often receive mail that way; our name is difficult.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 24."

Examiner AVERILL. Same will be received marked "Commission's Exhibit 24."

Q. Now, what happened after you received this letter in this connection?

A. A gentleman by, I think, the name of Kline called on me, and then he said he would place some books with us, and that these books would be very valuable; he would like to place them in some certain homes around the city, and selected our name as a good place to place them, and that they would be constantly added to with magazines each year, and as we understood it there would be no financial cost.

Q. How did you understand that, or from what did you get that understanding?

A. Well, the idea was sort of an advertising scheme or something, and that placing with some few people——

Q. Yes; but did you read something that gave you the idea that the books would be given to you as an advertising scheme, or did someone tell you that they would be given to you as an advertising scheme?

A. I think the man sort of made that explanation as he talked to me.

148 Q. The agent told you it was a free offer to you?

A. Yes.

Q. And that the books would cost you nothing?

A. Yes.

Q. Did he say whether or not the extension service, by means of which the books were to be kept up to date, would cost you anything?

A. No; he didn't say that.

Q. Did you buy the books?

A. I did not.

Mr. WINN. That's all the questions I have.

SIDNEY L. WEEDON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.
A. Sidney L. Weedon.
Q. You reside in Cleveland?
A. I reside in Cleveland Heights, which is part of Cuyahoga County.
Q. And what is your occupation, Mr. Weedon?
A. Publisher; president of the S. L. Weedon Company.
Q. And the S. L. Weedon Company publishes what?
A. New Students Reference Work.
149 Q. Is that reference work one of those works generally known as a subscription book?
A. Yes.
Q. How long have you been president of the company?
A. Six years.
Q. Prior to that time were you connected with this company?
A. This company or its predecessors.
Q. In subscription book work?
A. Yes.
Q. And how long have you been engaged in that work?
A. Eighteen years in June.
Q. Mr. Weedon, on an average, how many agents does your company employ?
A. Between seventy-five and a hundred and fifty. I should say an average of possibly one hundred.
Q. And how much of these United States is generally covered by these agents on behalf of your work?
A. The entire United States.
Q. And all of these agents, at least the average of these agents, make a fair living from disposing of your work?
A. Yes.
Q. Some of them, I imagine, fill in in the summer time; is that correct?
A. Yes; we engage a great many teachers for vacation work.
Q. And those teachers, on the average, make money
150 during the summer selling your work?
A. Yes.
Q. And your corporation has made money selling the work?
A. Yes.
Q. Do you have any difficulty, Mr. Weedon, with complaints alleging misrepresentations by your agents in the selling of your work?

A. We have very little trouble. Occasionally, what trouble we do have, is due to misunderstanding. For example, the books sell for $44.75, and occasionally some purchaser thought the price was $4.75, an obvious mistake. In other instances the set is planned by school people for school children, and occasionally someone gets the idea that because our representative talks about the schools and the need of a reference work in connection with school work that they are sent from the schools, which is a mistake. But other than that, we have—other than those misunderstandings, we have no trouble with misrepresentation whatsoever.

Q. On the average, how many of these cases of misunderstanding would you say occurred in your company during the period of a year?

A. Possibly one hundred, and that would, I think, be high.

Q. That would involve——

A. All kinds.

151 Q. Mr. Weedon, in your opinion, why does the Weedon Company have so few complaints compared with the number of agents which you employ, and with the number of sets which you must dispose of?

A. It is due, in my estimation, to two things. First, to the proper training of the agents, and during that training period every agent is given to understand that anything dishonest in the way of selling will be dealt with summarily; that we won't stand for any fraudulent representations of any nature in the sale of our set. Also in that training we train them on the merits of the book they are selling. We show them how to sell that book on what it contains and what it will do. The second thing that eliminates or reduces misrepresentation is close supervision after they are put to work in the field. If successive complaints of even a minor nature, of a misunderstanding nature, are received by our office, usually that representative is, so-called, "called on the carpet" before our manager and asked to explain; and if that practice is continued we know immediately that it is due to weakness in selling methods, and that representative either must discontinue that method of selling or leave our organization.

Q. Do you have any difficulty in procuring agents concerning whose selling methods you receive no, or practically no, complaints?

152 A. No; we have no difficulty in getting what we call the clean type of representative. In fact, I believe it is more difficult, really, to get the agent who has had experience, and who may or may not misrepresent, depending upon their earlier training.

Q. Do you employ the so-called professional book agent, if you are aware of his profession?

A. We have no set policy not to employ him or to employ him. We judge the representative on his personal qualifications and as much of his past record as we can obtain. We prefer not to engage an agent who has had previous experience, but we will take them provided their records are clear.

Q. It is your opinion, therefore, that a subscription book company which desires to sell honestly, and which desires to employ only those agents which will properly represent the work, may do so, and even may do so easier than not?

A. That is my opinion; yes.

Mr. WINN. I think that is all I have to ask Mr. Weedon.

Examiner AVERILL. I have nothing.

153 ELIZABETH OLSON was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name, please, to the reporter.

A. Elizabeth Olson.

Q. And you reside where, Mrs. Olson?

A. 591 East 120th.

Q. In what city?

A. Cleveland, Ohio.

Q. And you are here today in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. I am.

Q. Did there come a time, Mrs. Olson, when a man purporting to represent the Standard Education Society of Chicago called on you?

A. Yes, sir.

Q. Approximately when was this?

A. Well, I think it was early in 1926; I can't just remember the date.

Q. Early in 1926?

A. Yes.

Q. Somewheres within the first six months of 1926?

A. Yes; I can't just recall the date.

154 Q. Will you tell us, as nearly as you can recall, what this man's story was?

A. Well, he came to my door, and seemed to know my name, and asked me if I was Mrs. Olson. I said I was. He wanted to know if I was a member of certain organizations and churches and all that. I happened to be; in that way he worked himself in; he said he was there and wanted to talk to me about some educational work; and, of course, the way he got about it, I really didn't know he was an agent, book

agent, until he got in the house. Then I had a great time to get rid of him.

Q. Well, can you tell us approximately what he wanted?

A. Well, he wanted me to buy these books. He said the price of them; I can't just remember—it was over a hundred dollars; but if I would allow him to place them in my home and keep them in sight for demonstration, anybody that he might send to come in and see them, and recommend them, I could have them, I think it was, for $69.50. Well, I didn't feel as though I could buy the books at all. I tried every way to get rid of him. I had been ill in the hospital, and I didn't feel I could afford to buy them; but he just hung on until I finally did so; I would place them in my home.

Q. And you signed a contract for their purchase?

A. Yes. I didn't read it myself; he read it over to
155 me, something; I didn't know just what it was.

Q. What representations, if any, as nearly as you recall, Mrs. Olson, were made regarding the newness of this encyclopedia?

A. Well, he said they were new books that had just been gotten out by the Standard book concern.

Q. Said they were just off the press?

A. Yes.

Q. Did the books come, Mrs. Olson?

A. Yes; the books came.

Q. Have you them now?

A. No; I sent them back.

Q. Have you any of the extension service?

A. Not any. As fast as they sent them to me I mailed them right back, put the postage on they required, and sent them back; didn't even open them, because I knew what they were.

Q. I hand you a paper, Mrs. Olson, and can you tell me what it is?

A. Standard Education Society, Chicago, July 13, 1926.

Q. It is from the Standard Education Society?

A. From the Standard Education Society.

Q. To whom is it addressed?

A. Mrs. E. Olson.

Q. And that is yourself?

A. Yes.

156 Q. And you received this letter?

A. Yes; I received the letter.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 25."

Examiner AVERILL. Same will be received and marked "Commission's Exhibit 25."

Q. You say that you sent the books back, Mrs. Olson. Have you been released from your contract?

A. They never acknowledged receiving them at all.
Q. They never acknowledged receiving the books?
A. No.
Q. Have you been advised that you need pay no more on your books? On your contract?
A. No; they have kept sending—well, the last statement I think I got was in 1926, and I never sent any more money, and I never received any word from them again until I got these letters this spring.
Q. How much did you actually pay on account of this contract?
A. I think it was ten dollars; then I paid for the express charges back and forth.
Q. I hand you a paper; can you tell me what that is?
A. This is from Joseph E. O'Connell, attorney at law, Chicago.
Q. And to whom is it addressed?
A. Mrs. E. Olson.
Q. That is yourself?
157 A. Yes.
Q. And when is it dated?
A. April 19, 1929.
Q. And you received this?
A. Yes, sir.
Mr. WINN. I ask that this be received in evidence and marked "Commission's Exhibit 26."
Examiner AVERILL. Same will be received and marked "Commission's Exhibit 26."
Q. Did the agent tell you, Mrs. Olson, as nearly as you can recall, whether or not these books were being usually sold for $69.50, and that this was the price at which they were offering them to everybody at this particular time?
A. No; he said the price was over a hundred dollars, but I could have them at that price by exhibiting them in my home to anybody that they might send there to look at them. They were only placing one set in a neighborhood.
Mr. WINN. I think these are all the questions I have to ask.
Examiner AVERILL. I have nothing.

INEZ E. HILL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.
158 A. Inez E. Hill.
Q. Where do you reside?
A. 4160 East 99th.
Q. Cleveland?

A. Cleveland.

Q. Did there come a time, Mrs. Hill, when a person purporting to represent the Standard Education Society of Chicago called on you?

A. Yes, sir.

Q. Can you tell me approximately when that was?

A. About December 8, 1925.

Q. Can you tell me, Mrs. Hill, something that transpired, or anything that transpired prior to his visit to you in relation to this matter?

A. I had received a letter with an enclosed postcard.

Q. I hand you a paper; can you tell me what it is?

A. Yes; this is the letter received from the firm, signed Mr. Charles E. Knapp.

Q. What is the date of the letter?

A. November 24, 1925.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 27."

Examiner AVERILL. Same will be received and marked "Commission's Exhibit 27."

Q. After you received that letter, what did you do, Mrs. Hill?

159 A. I signed the enclosed post card.

Q. Which was for what purpose?

A. Which was signifying my willingness to accept the books. I did not know of an agent's coming.

Q. To accept the books—you mean in accordance with the statements in the letter?

A. Yes; in accordance with the statements in the letter.

Q. Then you say the agent did call?

A. Yes.

Q. Do you recall his name?

A. His name was Murphy.

Q. Can you recall approximately what his story was?

A. Well, his story was that I was one of several outstanding club women that had been selected to receive these books. I asked him where he got my name; he said from the Women's City Club. He, of course, spoke of his set of books and how very fine they were, and I was to give in return for this, I was to give a testimonial; after I had looked the books over and gone through them I was to give them a testimonial for the books.

Q. What else were you to give for the books, if anything?

A. Nothing for those books.

Q. That is, the encyclopedia itself?

A. For the encyclopedia itself. And then he said there would be—as things progressed there would be subse-

160 quent additions taking up inventions and discoveries and all that sort of thing that goes into an encyclo-

pedia, and I would be supplied with these books as they came off the press, but I would have to pay something on those; and he asked me—just wait a minute until I get this straight. I know I had to sign something, and I had to give him a check for five dollars.

Q. Did you understand this thing that you signed was a contract?

A. No; I did not; not until he was gone; then I thought to myself that is a contract.

Q. Did he tell you what it was? Did he tell you it was being signed for any particular purpose?

A. Oh, no. Well, he said it was signed for these books that were coming on.

Q. Did he tell you it was being signed for the purpose of contracting yourself to pay for the extension services that were to come in the future?

A. Now, I can't say that he did.

Examiner AVERILL. You used the expression there that he said when you signed that, that you were signing for the books that were coming on. By that expression "books coming on", did you mean that the reference as you understood it was to the extension books; that is, the books that were going to come off the press and be sent to you right
161 from the press, and that you were signing that paper in reference to those books, or were you signing the paper in reference to the books referred to in this letter, in which he also said were to be presented to you?

The WITNESS. Well, now, as nearly as I recall, I could not get this set of books without signing the other paper, and the other paper would guarantee that I would be kept on their list, and that these books would be sent me as they came off the press, and there was a little thin pamphlet came to me later on, which I promptly returned.

Q. And at the time you signed this paper, the agent had already told you that the extension service would cost you something?

A. He said it would cost a small amount; he didn't tell me what the amount was, and I didn't see the figures—around seventy dollars—until after he left; I saw that I had signed a contract.

Examiner AVERILL. Then he left a copy of it with you?

The WITNESS. Oh, yes; he left a copy with me, and he went very, very swiftly once he got my signature.

Q. And after he left, did anything happen in relation to this transaction?

A. Well, that evening I wrote my first letter telling
162 them that I thought I had been misled—because I referred to it in that. I told them I felt I had been

misled, and I had really no need of those books, and also mentioned the fact that my children were out of the age when they would want those even in school, and I preferred not to receive them, and simply told them not to send those books. Everything was sent under special stamp, so that I knew they got it; I sent everything that way.

Q. I hand you a paper writing and ask you to tell me what that is.

A. Well, that I received from them telling that they received my order.

Q. Tell me who it is from and the date.

A. This is from the Standard Education Society to myself, dated December 12th, but there is no year on it.

Q. Are you able to say what year you received it?

A. Well, I would say it is in the same year as I signed that contract.

Q. That would be 1925?

A. Yes.

Mr. WINN. I offer this in evidence, and ask that it be marked "Commission's Exhibit 28."

Examiner AVERILL. The paper will be received and marked "Commission's Exhibit 28."

Q. I now hand you a paper writing and ask you if
163 you know what it is.

A. This is a letter from the Standard Education Society, sent December 16, 1925, sent directly to me. Oh, no. I recollect this. I beg pardon. I wrote this to them and I wrote it on December 16, 1925. It was in reference to the letter they wrote December 12th, exhibit 28.

Q. And this is a duplicate original of that letter?

A. That is a duplicate.

Q. And this letter was in the typewriter at the same time as the letter which you actually sent to them?

A. It was.

Q. And you did send an actual duplicate of this letter to them?

A. I surely did; and have my receipt there pinned on from the post office; I sent it registered.

Q. What is the receipt that is pinned to this letter?

A. It is a registered-letter receipt that I sent to the Standard Education Society.

Q. And the receipt is for the duplicate of this letter?

A. Yes.

Mr. WINN. I ask that that be received in evidence and marked "Commission's Exhibit 29."

Examiner AVERILL. The paper in question will be received in evidence, marked "Commission's Exhibit 29."

Q. I hand you a paper writing and ask you to tell me what that is.

164 A. This is from the Standard Education Society to me, January 5, 1926.

Q. And you received that through the mail?

A. Yes.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 30."

Examiner AVERILL. Paper in question received and marked "Commission's Exhibit 30."

Q. I hand you this paper writing and ask you if you can tell me what it is?

A. Well, this is a letter that I sent in answering their letter to Mr. L. A. Williams.

Q. That is a carbon-copy duplicate original of the letter you sent?

A. Yes.

Q. It is not signed, but I notice an address in the lower left-hand corner, 4160 East 99th Street.

A. That is my address.

Q. And you actually sent this letter to the Standard Education Society?

A. Indeed, yes.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 31."

Examiner AVERILL. The paper will be received and marked "Commission's Exhibit 31."

165 Q. I now offer you another paper writing of two pages. Can you tell me what that is?

A. I received this from the Standard Education Society, January 25, 1926.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 32."

Examiner AVERILL. The paper in question, consisting of two sheets, will be received in evidence and marked "Commission's Exhibit 32."

Q. Was the Standard reference work sent to you, Mrs. Hill?

A. It was.

Q. And have you it now?

A. No, sir.

Q. Why not?

A. I refused to accept it.

Q. Have you received the extension service?

A. No; I have not.

Q. Have you received any of the extension services?

A. I received a very little pamphlet and that I returned.

Q. Have you been released from your contract?

A. Not that I know of.

Q. Did you pay anything to the Standard Education Society at any time?

A. Not to them; I paid Murphy.

Q. How much did you pay Mr. Murphy?

166 A. A check for five dollars.

Q. Was that check cashed by the Standard Education Society?

A. I am quite sure if was, but I would have to go back to look it up.

Q. Was your account depleted by five dollars as a result of this transaction?

A. Well, I can really say that it was.

Q. Did you ever get that five dollars back?

A. No.

Q. Did the agent make any representations to you as to the ordinary selling price of this work in the usual course of trade?

A. That I couldn't say.

Q. Did the agent tell you that it usually sold for $69.50?

A. No; I don't recall that the price was mentioned at all.

Q. I hand you a paper writing, and can you tell me what that is?

A. This is a letter received from R. M. Jackson, Chicago.

Q. In regard to what?

A. In regard to the Standard Education Society, a creditor's letter.

Q. And what is the date of that?

A. That is September 1926.

Q. What day in September?

A. The 9th.

167 Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 33."

Examiner AVERILL. Same will be received and marked "Commission's Exhibit 33."

Q. I hand you another paper writing, and ask you to tell me what that is.

A. This is to Mr. Jackson from me, September 16, 1926.

Q. And the piece of paper attached thereto is what?

A. Is a receipt for registered letter; the letter was sent registered.

Q. And you mailed this letter to Mr. Jackson?

A. Yes; I did.

Q. And you registered it?

A. Yes, indeed.

Q. And this is the receipt which you received at the time you registered it?

A. Yes.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 34."

Examiner AVERILL. The same will be received in evidence and marked "Commission's Exhibit 34."

Mr. WINN. That's all.

168 Examiner AVERILL. The hearing at Cleveland having been concluded, and motion having been made for a hearing at Toledo, Ohio, the case is now adjourned to Toledo, Ohio, room 39, United States Post Office Building, May 14, 1929, at ten a. m.

169 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

TOLEDO, OHIO, *May 14, 1929.*

Met pursuant to notice, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, examiner.

Appearances: Robert H. Winn (Washington, D. C.) for the Federal Trade Commission. Counsel for respondent not attending.

170 MARIE BECK WHELAN was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Mrs. Whelan, give your full name to the reporter.

A. Marie Beck Whelan.

Q. You reside where?

A. 348 Melrose Avenue, Toledo, Ohio.

Q. You are here today in response to a subpena directed to you by the Federal Trade Commission?

A. I am.

Q. In the matter of the Standard Education Society?

A. Yes.

Q. Did there come a time, Mrs. Whelan, when someone purporting to represent the Standard Education Society called on you?

171 A. Yes.

Q. Approximately when was this?

A. In the fall of 1927—November, I think.

Q. Was there anything that occurred prior to this visit having to do with this company?

A. Yes; I think two months before, about in September, they sent a card, and I responded by signing my name to that card and then I had this call.

Q. Was there anything enclosed with the card at the time you received it?

A. I don't recall just now.

Q. I hand you a paper writing; tell us what that is.

A. This is the letter that I received October 12, 1927, from Charles E. Knapp.

Q. Was the card enclosed in that letter?

A. I really don't remember.

Mr. WINN. I offer this in evidence and ask that it be marked as "Commission's Exhibit No. 35."

The EXAMINER. It will be received in evidence and same will be marked "Commission's Exhibit No. 35."

Q. You say you received a call as a result of this card?

A. Yes.

Q. Just as near as you can, tell us what the agent told you—the conversation that you had with him when he made this call.

A. Well, I remember—I think Mr. Mahafey and
172 another gentleman called at the house in response to my having sent this card, and they offered me an encyclopedia, that they were presenting these encyclopedias to a selected list in this vicinity, and I was one of them; this encyclopedia was supposed to be sold at $169.50, and I was to get the encyclopedia—I was to pay nothing—but I was to pay for the extension service for ten years, $69.50, and I paid $29.50 and the balance in the four months at ten dollars per month.

Q. You were to receive the encyclopedia free?

A. I was to receive the encyclopedia free.

Q. But you were to pay for the revision service?

A. Yes.

Q. Was there anything else you were to receive under this agreement?

A. When I paid the $69.50, I received a set of Conrads.

Q. Did you purchase the set of Conrads?

A. That was given to me.

Q. Did you sign the contract that these men presented to you?

A. I did.

Q. I hand you a paper writing; tell me what that is.

A. This is the paper I signed on November 29, 1927.

Q. I notice, Mrs. Whelan, that it embraces in the parenthesis a set of Conrads; that is apparently in the same handwriting of the person that signed this; did you write that in or did the agent?

173 A. I wrote that.

Q. Did you write it in the presence of the agent?

A. I did.

Q. He saw you write it?
A. Yes; he did.
Mr. WINN. I offer this contract in evidence and ask that it be marked as "Commission's Exhibit No. 36."
The EXAMINER. It will be received and marked "Commission's Exhibit No. 36."
Q. Did you receive the books, Mrs. Whelan?
A. I did.
Q. Then what happened?
A. When I received the books, I examined them, and upon examination I found that they were not what they represented them to be. The agent at the time I signed the contract told me that this set was on a par with the Britannica, and I wrote a letter to Mr. Knapp and told him to come and get them.
Q. You wrote Mr. Knapp?
A. I did.
Q. Have you a copy of that letter you wrote to Mr. Knapp?
A. No; I wrote the letter in longhand, and kept a copy in longhand.
Q. The copy that you kept, however, was not a duplicate original of the letter you wrote?
A. No; it was not.
Q. Will you tell us, in substance, what is contained in that letter?
174 A. I wrote and said that upon examination of the books that they didn't come up to the—what they represented them to be, they were supposed to be on a par with the Britannica; that I had one set of, I don't know whether I mentioned it, Student's Reference Library, which was very similar; I felt this was just a duplicate set. I asked to have my contract cancelled on some satisfactory basis.
Q. Did you receive any response to this letter?
A. Yes; I received a letter.
Q. Have you that letter?
A. I don't recall whether I have the letter.
Q. So far as you know, it is no longer in existence?
A. Some of those letters were destroyed.
Q. To the best of your knowledge and belief, is it in existence?
A. I think not.
Q. Can you tell us, in substance, what was in that letter?
A. As I recall Mr. Knapp's letter, he wanted to hold me to the contract.
Q. You have never been released from your contract?
A. I have not.

Q. You don't recall the name of the agent who was with Mr. Mahafey?

A. No; I do not.

175 Q. Did the agent tell you that the works were being generally given away in Cleveland and Toledo?

A. No; there was a select list of people to be presented with these books, and they were to give an endorsement for the presentation, as I recall it.

Mr. WINN. I think that is all.

The EXAMINER. I have no questions.

Mr. WINN. One more question, Mrs. Whelan.

Q. You are the Mrs. J. C. Whelan whose name appears on the subpena?

A. I am.

GEORGE HENRY GOODRICH was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name, please?

A. George Henry Goodrich.

Q. Where do you reside?

A. Toledo, Ohio.

Q. You are here in response to a subpena directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. Yes, sir.

176 Q. Was there a time, Mr. Goodrich, when a person purporting to represent the Standard Edueation Society of Chicago called on you?

A. Yes, sir?

Q. Do you remember when that was?

A. In January 1926.

Q. Do you recall the name of the agent?

A. A Mr. Lewis; C. Lewis, I think.

Q. Did you receive anything, Mr. Goodrich——

A. Nothing at all.

Q. Prior to the call of the agent?

A. No; nothing.

Q. Will you tell us as near as you can recall, Mr. Goodrich, the conversation between you and Mr. Lewis?

A. He came up to my office with a selected list of about thirty people who was going to get the encyclopedia; and I would get a Reinhart if I took this service, loose-leaf service, I believe, for $49.50. The sets were worth $168.00, he said.

Q. Were those the exact words he used?
A. Yes.
Q. Did he say the sets were worth $168.00?
A. Yes.
Q. Or sold for that?
A. Were sold for $168.00.
Q. Are you sure that is what he said?
A. Yes—nothing else; I didn't receive anything at all.

177 Q. Did you sign the contract?
A. I did.

Q. I hand you a copy of a paper writing; tell us what that is?
A. That is the order I gave Mr. Lewis for the $5.00 I paid him.
Q. Mr. Lewis signed that?
A. Yes, sir.
Q. I notice there is at the top "Publicity department"; was any explanation given of that?
A. Yes; it was to be used as advertising; that is the reason he gave me that other set free.
Q. He represented the publicity department also?
A. Yes.
Mr. WINN. I offer this in evidence and ask to have it marked as "Commission's Exhibit No. 37."
The EXAMINER. The same will be received and marked "Commission's Exhibit No. 37."
Q. Did you pay Mr. Lewis any money?
A. I gave him a check; had a check with me.
Q. Was the check cashed?
A. It was.
Q. The check was for how much?
A. $5.00.
Q. Did you get the books?
A. No.

178 Q. Did the Standard Education Society return the $5.00 to you?
A. No, sir.
Q. Were any representations made to you as to the newness of the Standard's reference work which was to be given to you?
A. He represented them to be up to date, a new edition, to be right up to date, right along.
Mr. WINN. Those are all the questions I have to ask of Mr. Goodrich.
The EXAMINER. I have none.

Mrs. CARROLL R. HORTON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter.

A. Mrs. Carroll R. Horton.

Q. You reside at Toledo?

A. 2345 Glenwood.

Q. Did there come a time, Mrs. Horton, when a person purporting to represent the Standard Education Society of Chicago called on you?

A. Yes; there was.

Q. Approximately when was this?

179 A. It was about January of 1926.

Q. Did anything happen, prior to this call, having to do with the Standard Education Society?

A. Well, there was a card, an advertisement come from the book concern and said that if we would return this card with our name and address we would be given a complete set of books free.

Q. I hand you a paper writing which is marked "Commission's Exhibit 35" which is a letter from Charles E. Knapp to Mrs. J. C. Whelan in Toledo, and ask whether or not you have seen anything which was substantially like this letter heretofore?

A. Well, I just now notice, as I read this, it says something about the loose-leaf extension service will be supplied in the same terms to our regular subscribers. I knew nothing about a loose-leaf service until he was pretty near ready to leave the house. He only talked about a set of books, and when I asked him what was the idea, how he give me a free set of books, then he talked about the loose-leaf service.

Q. But the letter you received was substantially the same as this letter except the paragraph relating to the loose-leaf service?

A. As I remember it was a double letter; if you want a free set of books, return the opposite card. I don't recall a letter like that.

Q. You returned that card?

A. Yes.

Q. Then what happened?

180 A. Then I never heard anything further from them by mail, but this book agent called on me one Saturday afternoon about twelve o'clock.

Q. Do you recall his name?

A. I don't; but I can get it, because I have the contract.

Q. What was the conversation between you and the agent, so far as you can remember?

A. Well, he just came in and said I was on his list as being one of thirty, or some such number, and that I was to have a set of his books free; that I was a representative citizen of the city, a club woman; and the reason I was so selected was because they expected each one of these families to write a recommendation on the books after they had thoroughly gone through them, and that they would allow us three months' time to do this, and that was why they were giving them to us, for our letter of recommendation. Then he continued to show the books. I can't remember whether his copies had any numbers on the pages or not, but they surely must have, because that would have been evidence to me how to look anything up. But the ones I received did not have any. Then he eventually told me about the loose-leaf service.

Q. What was the proposition in regards to the loose-leaf service?

A. The loose-leaf service was to cost $69.50. You pay $4.50 down and $5.00 a month, and he was to keep it up to date, I believe, for ten years. The books came and were
181 not as represented at all, in my estimation, and I returned the books. But it must have been six months to a year or maybe more or later before I ever received any loose-leaf service at all.

Q. Did you retain the loose-leaf service?

A. I guess I did receive one or two before I received the books, and I returned them all together, and every time I would get a bunch of the loose-leaf service I returned them. They are not at all careful about the mail, because I gave them a change of address, and they have the proper address, but every now and then one or two of these will come to the old address.

Q. You say you returned the books to them?

A. Yes, sir. Sent them by express.

Q. Have you been released from your contract?

A. Not to my knowledge.

Q. How much have you paid the company altogether?

A. $19.50.

Q. Has the $19.50 been returned to you?

A. It has not.

Q. Did you write to the company after you received the books?

A. Well, I wrote to them; yes.

Q. Have you a copy of that letter?

A. I don't have.

182 Q. The original copy?

A. I haven't a copy of the original letter. No.

Q. Will you tell us in effect what was in that letter?

A. As near as I can remember, I wrote to them about four months after I had gotten the books—after I had a good

opportunity to look them over and I told them the books were not what I wanted at all, or what I thought I bought; that I wished to purchase something in the nature of history, not encyclopedia, as we already have the Britannica, and I thought it was one of the best authorities. I told them about the method the salesman used was very flattering; that I was one of the few selected in the city to have them, and could have them only because my letter of recommendation would be valuable to them; and after looking over these books I could not write them a letter of recommendation and that I was not going to pay anything further on the books; that I would return them to them. Then I believe I said if they had a set of histories that I could use I would talk to them about it and see what I might decide to do.

Q. Were you ever able to get together on a set of histories?

A. No. He never had any set of histories. The only thing he could mention was Wells' Outline of History, and that was not what the type of history I meant. Then he offered me these popular writers or novels or a set of American and English literature, the set of books they were giving if
183 you pay your account in full almost any time, and continue to pay on my contract. So I did not write any further to them. I just returned the books to them. I never asked them to return my $19.50. I just figured that is what it cost to learn about a book agent.

Q. I hand you a paper writing. Can you tell me what that is?

A. This is a letter from the Standard Education Society, their collection manager, Mr. Williams. He tells me that——

The EXAMINER. Don't tell what it tells you. Just who it is from and who it is to?

A. From Williams, collection manager, Standard Education Society, and it is to me.

Q. What is the date of the letter?

A. November 24, 1926.

Q. Was that, as near as you can recall, before or after you returned the books?

A. It is before I returned the books.

Q. It is before you returned the books?

A. I think so.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 38."

The EXAMINER. It will be received and marked "Commission's Exhibit 38."

Q. Were any representations made to you, Mrs. Hor-
184 ton, as to the usual selling price of this work which the agent was offering to you?

A. Oh, yes. He did say something about that to try to help me realize how much he was giving me. All I was paying was the small sum for the loose-leaf service.

Q. Do you recall approximately the usual selling price as he gave it of the reference work itself?

A. Not exactly, but I believe he said something about one hundred or one hundred and twenty-five dollars. I can't be certain about that letter being before or after I returned those books. But I can look that up on the express receipt.

Mr. WINN. I think that is all.

Mrs. EMMA L. RYNDER was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your name?

A. Mrs. Emma L. Rynder.

Q. You live in Toledo?

A. Yes, sir; 3841 Torrence Drive. At the time of this transaction I lived on Grand Avenue; 1026 Grand Avenue.

185 Q. Did there come a time when a representative purporting to represent the Standard Education Society called on you?

A. Yes.

Q. Do you recall approximately when that was?

A. Just a moment. I think I will be able to tell you.

Q. All right.

A. I think in 1925.

Q. 1925?

A. I think so.

Q. You don't recall whether it was spring, winter, summer, or fall?

A. Yes sir; it was in the late summer.

Q. Late summer?

A. Yes.

Q. And you believe in 1925?

A. Yes.

Q. Do you recall the representative's name?

A. I don't recall it exactly. It was a name similar to Watters.

Q. Had you had any correspondence or had anything happened prior to his visit which connected up his visit?

A. Yes. I had several letters and post cards saying that they wished their representative to call on me and that usual statement that I had been selected because of this and that. But I was not flattered——

186 Q. I hand you a paper which was marked "Commission's Exhibit 35", which is a letter from one

Charles Knapp to Mrs. Whelan, in Toledo. Were any of the letters you received similar to the body of this letter?

A. As I remember it; yes.

Q. Now, the agent called, you say?

A. Yes.

Q. Would you tell us as much of his conversation and of your conversation with him as you can recall?

A. As I recall, he stated that I had been selected because I was well known in the city and my influence would be worth something to them, and for that reason they wished to present me with a set of books, and I said, "Who do you have on your list that have ordered the books?" They gave me Mrs. Morris' name and several other women whom I knew very well, and I was surprised to find their names there. And I thought, perhaps, they felt as I did; it might be a good test to receive the books and examine them. He showed me a list of names, people whom I knew well—most of them women whom I have known, women of good judgment and whose opinions I regard highly. Although that did not influence me in making any decision, I felt from what I knew of any encyclopedia——

The EXAMINER. You haven't yet told us what he offered you; or if he made any offers, what he did. Then you
187 can tell what influenced you. Let's find out what he told you?

The WITNESS. He offered me a set of what he said were two encyclopedias, a new encyclopedia. I could not see any reason why I should be given a set of encyclopedias. They are valuable. I refused. I said I was quite busy. I did not wish to be discourteous, but I did not believe I had any time longer to talk. The man phoned me two or three times for an appointment, saying he had something further to say if I would see him. I was busy. He did not make any appointment but he came to the house.

The EXAMINER. The second time?

The WITNESS. Yes; and the third time. Each time I refused, trying to be courteous, saying I was not interested; that I wanted to know more about the encyclopedia. The last time he came my son was present and he made this remark, "If they were as represented, they might be valuable to him, especially the history", and that was the thing that influenced me to at least inspect them, but I refused to sign a contract. I said they could send the books and I would examine them. But I did give him the check to pay for the supplementary material which was to come
188 regular—he told me monthly—as a magazine.

The EXAMINER. Don't you see you haven't told us anything yet about his ever saying anything to you about

having to pay for anything. What we want of you is to give us as near as you can a statement of what he told you first about the books. Second, if he did say anything about any other service that was to be rendered, give that, and then afterwards you tell us this?

The WITNESS. When the agent talked to me the first time he did not mention any supplementary material at all. It was to be absolutely new encyclopedias.

The EXAMINER. Then how were you to get them?

The WITNESS. They were giving them to me for my influence, having my name on the list, is what they told me. I did not feel if they were a good set of encyclopedias that they would want to give them to me and I was suspicious that there was something else to the transaction. And then I had no longer time to talk and he left. Then he phoned, as I said, wanting to make another appointment. I did not make the appointment, but he came to the house. On his second visit he told me there was the supplementary material which would keep the encyclopedias up to date and all they were asking was to have a little something paid for that.

189 And, of course, then I understood it, and I said, I don't believe we were ready to buy an encyclopedia yet, and when we were, I said to him each time—I remember saying "buying the encyclopedia" after he told me there would be the supplementary material to pay for, that we were not ready to buy. That we felt we knew a little something about books and we would make the selection when the right time came. Then he went. I made no arrangement with him. He came back the third time. This time my son was present and heard all the conversation. He said practically the same thing. My son made the remark—he took the prospectus and looked at it and said, "If this is as it is represented to be, it might be useful to me." I said they could send the books, but I refuse to sign the contract. I said I will examine the books and if they are helpful and useful to my son, then I will pay for them, but sign no contract. Then I did give him a check, which might be regarded as having made a contract. I gave him the check for five dollars and some cents. I don't remember, but I can look it up in my cancelled check book, to pay as first payment on this

190 supplementary material. I said if the books are as represented and my son wishes to keep them, then I will pay for them. I signed no contract. The man handed me a slip of paper, the usual form, with his signature on it, but there is no signature of mine on it, and there was none on it. But I gave him the check with my signature on it, of course; a check on the Dime Bank.

Q. What did you understand, of course, from what the agent told you, that you were buying?

A. The agent told me I was buying the supplementary material; I was paying nothing for the books. That they were a gift. He repeatedly said that both over the phone and in his conversation and the letters similar to the one you have shown me, but I was suspicious and signed no contract. I said to him that if they were as represented and I kept them I would pay for them. I said to him, I remember he laughed about it, joked about it. He said you persist in saying "pay for the books", and I said you could not give me the books. I said the supplementary material would probably not be worth that much. I said we take quite a number of magazines, current reviews, and I know what they cost. But the whole understanding was I was taking the books to examine and when they came they were not as represented. They were made from old plates, very
191 old plates, such plates as I have seen before. And the bindings were not as represented. Of course, that would not be an objection to me. I packed them in the same container, with the same wrappers, and included these two little pamphlets that came along. I received nothing else. I was to pay for supplementary material, and I received nothing else.

The EXAMINER. After you packed them, what did you do with them?

The WITNESS. I packed them and shipped them by express; notified them that they were being shipped as I did not find them as represented.

Q. You did notify them you did not find them as represented?

A. Yes. And a letter went on before the expressman came.

Q. Did you specify the misrepresentations in the letter?

A. I don't know as I did. I think I said they are not as represented and would have possibly no use for them.

Q. Have you been released from your contract?

A. I haven't signed any.

Q. Have you been released from the contract which it is alleged you signed?

A. No. I have been receiving summons. Months would pass and I would not get them and then occasionally I would get one of these letters. Recently I have been getting some. I was sick in bed with the flu when my family
192 read in the paper about the hearings and called my attention to it or else I would have appeared at that time.

Q. What reference work definitely do you recall the name of the reference work which was sent to you?

A. It is rather stupid of me. It did not interest me enough to remember exactly what the name was. I was ashamed of the whole transaction; tried to forget it; but I did keep the correspondence.

Q. Do you know, Mrs. Rynder, whether or not the Mrs. Morris concerning whom you spoke earlier in your testimony actually did purchase the books and did permit the use of her name?

A. I have never talked with Mrs. Morris about it. We are friends. I am so ashamed of it I did not say anything to her about it. It was Mrs. Robert Morris. Mrs. Mark Winchester was another name. I don't recall now, but there were a number of outstanding women whose names were there. I remember saying to the agent the first time he came, "What ministers' names do you have"? I said, "Ministers use encyclopedias. What ministers did you approach." He did not want to talk about it. I remember distinctly there were no ministers. I happened to belong to Dr. R. W. Long's church, and I said Mr. Long's name don't appear here.

Q. Has the money which you paid been returned?

A. It has never been returned, although I requested
193 its return.

Q. I will hand you a paper writing. Will you tell me what it is?

A. It is a letter to Mrs. Emma L. Rynder and it is from C. M. McDermitt.

Q. What is the date of it, please?

A. February 11, 1929.

Q. Are you the Mrs. Rynder to whom it is addressed?

A. I am Mrs. Emma L. Rynder.

Q. You received that letter?

A. I received that letter.

Mr. WINN. I offer this in evidence and ask to have it marked "Commission's Exhibit No. 39."

The EXAMINER. The paper in question will be received and marked "Commission's Exhibit 39."

Q. Approximately how long after you gave the check to the agent did you write this letter concerning which you have spoke of, in which you stated that the books were not as represented?

A. I am not able to recall; but within reasonable length of time to make an examination.

Q. Would you say within three months from the date that you gave the check?

A. Yes. It was within that time.

Q. You don't have a copy of that letter that you
194 wrote them?

A. No.

Mr. WINN. That is all I care to ask. Do you have anything?

The EXAMINER. Yes. Just a moment.

By the EXAMINER:

Q. Mrs. Rynder, refreshing your memory from this letter that you state you received, can you from that state the name of the people with whom you supposed you were dealing in connection with this work?

A. Yes. Standard Education Society. I remember that distinctly.

Q. They were the people?

A. Oh, yes. Standard Education Society, but I don't remember the exact name of the book.

Q. It is the name of the work you don't remember. I thought you did not remember the name of the people?

A. I remember the name of the people. No; just the name of the work I don't remember.

Q. I see. Thank you. I misunderstood you.

A. Oh, yes. Standard Education Society.

The EXAMINER. That will be all.

(Noon recess.)

195 TOLEDO, OHIO, *May 14, 1929.*

Met pursuant to adjournment, two p. m.

Before: EDWARD M. AVERILL, examiner.

Appearances: Robert H. Winn (Washington, D. C.) for the Federal Trade Commission.

Mrs. C. H. GREMLING was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.

A. Mrs. C. H. Gremling.

Q. You reside in Toledo?

A. My street is just outside the city limits.

Q. First street the city limits?

A. Yes. 428 Wagoner Boulevard.

Q. You came here today in response to a subpoena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes.

196 Q. What is your occupation?

A. Public-school teacher.

Q. You teach in the public schools where?

A. In Toledo.

Q. Did there come a time, Mrs. Gremling, when a person purporting to represent the Standard Education Society of Chicago called on you?

A. Yes.

Q. Can you tell me approximately when that was?

A. January 22, 1926.

Q. Were you at that time a school teacher in the public schools of Toledo?

A. Yes.

Q. Had anything occurred prior to his visit which you are able to connect up with his visit in connection with the Standard Education Society?

A. Yes. I received—I think I got two letters. I think the first one I did not answer. I think the first card I did not return and I got another one. I am not sure about that. It seems to me when I got this first one I did not pay any attention, but I received this letter and there was a post card——

Q. Just a second. Before we go too fast. You did receive a letter?

A. Yes.

197 Q. I hand you a paper writing. Will you tell me what it is?

A. It is a letter to Mrs. C. H. Gremling, Toledo, Ohio, and from Charles E. Knapp.

Q. Dated when?

A. January 13, 1926.

Q. You received this letter?

A. Yes, sir.

Q. And this is the letter you were speaking about just now?

A. Yes.

Mr. WINN. I offer this in evidence and ask it be marked "Commission's Exhibit 40."

The EXAMINER. The same will be received in evidence and marked "Exhibit 40."

Q. You say there was a card that was inclosed in that letter that was received?

A. I believe there was a post card to be returned with the name and address.

Q. Did you return the card?

A. Yes.

Q. Did anything occur thereafter as a result of your sending this card?

A. Well, the next thing was this salesman. He said he had been at the house several times and I was not home. I had a housekeeper and whenever I would come home she would say there was someone here today but I would

198 not have any idea who it was. There were so many people calling, salesmen and agents. We came home and he was sitting in front of the house in a machine. We thought maybe we must have company. It was about eight o'clock or nine o'clock. We drove in the garage. We did

not recognize the car as that of any of our friends. We drove around the garage and went in the house. After we were in there a little later the door bell rang. He said he had made several calls and never could catch me so he thought he would park right there and wait until I got home.

Q. This man was the agent of the Standard Education Society?

A. Yes.

Q. What was his story, as near as you can recall?

A. He took an awful long time to come to the point. What I remember about it, he came in and, of course, the way he come to get in my house was by using Mr. Meek's name.

The EXAMINER. What we want is for you to tell what the man said to you and what you said to him when he came in, in regard to these books and things of that sort.

A. Of course, I can't remember everything he said.

Q. I understand that.

A. The way he got me to listen to him and give him the time which I did not care about doing, it was quite
199 late in the evening, was by using this ruse of his saying Mr. Meek had given him my name as a list of representative teachers. Then he started in showing the book.

Q. Who is Mr. Meek?

A. Superintendent of Toledo public schools.

Q. Did he say, first, that Mr. Meek had recommended the book?

A. Oh, yes; very highly.

Q. You say then he sort of showed you the book?

A. Then he took a long time to go through the book and all the details of it and pictures, and I could give my attention to so many things I really got nervous waiting for him to come to the point.

Q. What was the point, Mrs. Gremling?

A. The point was now that I was to get these free; just simply to write a letter of my opinion, stating my opinion of these books, and to allow them to use my name in recommending later; and then after it was all settled and I was still sold on that, that part was about finished up, then he started working on this loose-leaf extension service.

Q. And what was that to be?

A. That was for—I think it was at least twice a year we were to get a loose-leaf pamphlet of current events—of things that happened since the last pamphlet had been sent out.

Q. Was that to be given to you also?

200 A. No. This was to cost $69.50 for ten years' service. That would come on for ten years. There was a

loose-leaf binder included to file them in, and they were supposed to be arranged so they could be filed in alphabetical order; which I found out afterwards that could not be done.

Q. Did the agent tell you that the books were usually given away and that the loose-leaf service was sold at $69.50?

A. No. The regular price of the books was $110.00. Loose leaf $100.00. He said it would cost anybody else $210.00, even if the President of the United States wanted a set.

Q. He said that or you said that?

A. He said that. He pounded on the table when he said it.

Q. Dou you recall——

A. My husband heard him say that.

Q. I wonder if you could not give us in a little more detail, as near as you can recall, what his conversation was at that time.

A. When he came to this part about the loose leaf, I said I will let the loose leaf go; I will take the books and find out about getting that loose leaf later.

Q. When you said you would take the books, did you understand you were to pay anything for them?

A. No. I wanted to find out if they really meant to
201 give me the books free without this other. Then he said, "You would not want the books without the extension service. They would get out of date within a short time, and the extension service is what they would recommend to be good because it keeps the encyclopedia up to date.

Q. Then what did he say?

A. Then he said that I would not want the books without the extension service. He said I could get it on very easy terms, and I said, "Well, how easy?" So the lowest terms he made me. I wanted to get it down as low as I could until I found out further about it. He said $4.50 down and then $5.00 a month. So I gave him a check for $4.50.

Q. What was it that he said in particular that you recall regarding the usual price of the books; you mentioned something about the President of the United States a moment ago?

A. He said if I did not take this extension now, it would cost me $100.00 later on at any time I decided to take it.

Q. That was the extension service alone?

A. Yes.

Q. Then what? You mentioned something about the President a few minutes ago.

A. That is what he said; even if the President of the United States wanted a set of these books, it would cost him $210.00 with the extension service.

202 Q. Did he show you anything to back up that statement?

A. He showed me a contract. He took it out of his pocket. He took it out of his vest pocket. He had it folded up and he had written on there the price of the books, $110.00, and the revision service, $100.00, which would make a total of $210.00 for anyone else.

Q. After that then you signed a contract for the purchase of the extension service?

A. Yes, sir.

Q. I hand you a paper writing. Will you tell us what it is?

A. This is a copy of the contract.

Q. Is it a copy of the contract that you signed?

A. It is a copy of the contract I signed; one just like it.

Q. I notice it to have here where it says extension service, there is a line Standard Reference Book bound ten volumes artcraft, and in the space where price should be there is a line drawn through. Was any particular mention made of that fact at the time the contract was filled in?

A. Well, there was no price put in there, would designate that the books were free.

Q. There is a price of $69.50 placed on the line that specifies for ten years' revision service including loose-
203 leaf binder which is to be five volumes, also artcraft; what did the agent say as to that?

A. About the five volumes, they figure that by the time the ten years were up, that these loose-leaf pamphlets would be as thick as five volumes of the other books and would correspond to the other volumes.

Q. I am asking about these figures which say $69.50 now particularly?

A. The $69.50 was what you were paying for the ten-year extension service.

Q. And for that only?

A. Yes.

Mr. WINN. We offer this paper writing in evidence and ask it be marked "Commission's Exhibit 41."

The EXAMINER. The paper in question will be marked and received as "Commission's Exhibit 41."

Q. Did you receive the books, Mrs. Gremling?

A. Yes; I received the books.

Q. Do you have them now?

A. Yes. I wanted to return them but they would not take them back.

Q. Why did you want to return them?

A. After I found out I was not satisfied with them, that they were not what I thought they had been represented to me, I thought the best thing to do would be to offer
204 to return them.

Q. Have you paid anything under that contract?

A. Only what I gave the salesman.

Q. Have you been released from your contract?

A. No.

Q. Did the agent tell you that he was making a general practice of giving these books away in this particular community?

A. No.

Q. Or making a general practice of selling the extension service for $69.50?

A. No. They were supposed to have just a certain list of names that he was to call on. He mentioned several prominent people in the city that he had given the books to and they had accepted them and he said when I recommended different names to him that I thought they would appeal to—he said he was not that kind of a salesman, he was not doing that; that later on a clique of salesmen would follow him and cover this territory.

Q. Did he purport to be a salesman?

A. Yes. I should think so.

Q. Did the agent tell you, Mrs. Gremling, that the ten volumes which were given to you were just off of the press?

A. They were to be a very late set. I don't know as he said they were just off of the press but they were sup-
205 posed to be up to date.

Q. He gave you, by his words and actions, an understanding that the plates were new?

A. Yes; and what was not included in the volumes would be in the first set of the extension.

Q. Did you receive any of the extensions?

A. I received the extensions and returned them without using them.

Q. Have you found the books to be up to date?

A. Well, I have not. There are some volumes I haven't even opened. I haven't used them. I couldn't tell you anything about them. I left them in the carton that they came for over a year. Now, I just have them out on a shelf but I haven't used them enough.

Q. Why haven't you used them?

A. I haven't had to use them. I had other books. It was not necessary that I use these. Then, I always felt in case some trouble of this kind might come up that I might have

to return them. I want them in good order. There are some volumes I did not even open the covers.

Q. When you received them did you examine them at all?

A. Yes. I examined them. I found the papers and covers and things were not what I expected.

Q. And that is the reason that you have not checked over them as to their newness and that is the reason you
206 have not opened some of the volumes?

A. Yes.

Mr. WINN. I think that is all I care to ask.

By the EXAMINER:

Q. You said, "Not what you expected." From what did you form an idea as to what they would be?

A. I expected better paper and firmer and the cover to be a better cover. He had a volume that was on very good paper and the pictures were just fine. They were, oh, I cannot say all of them but nearly all, they might have been all but a few, with colored plates and in these I think the book will have maybe one colored plate on the volume.

Q. You mean then he showed you a prospectus with different grade plates than what you received?

A. Papers that had been taken out of the volumes that were to come.

Q. The paper in his prospectus was different than the paper in the volume that you received?

A. Yes, sir. His had much better, and I believe he had a real leather, cover. I don't know, but I know it was better than mine.

The EXAMINER. That is all I have.

207 SUSAN E. GODFREY was thereupon called a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your name, please.

A. Susan Godfrey.

Q. You live in Toledo?

A. Yes.

Q. What is your occupation?

A. Teacher.

Q. In the public schools of Toledo?

A. Yes, sir.

Q. Did there come a time, Miss Godfrey, when a person purporting to represent the Standard Education Society called on you in regard to the Standard Reference Work?

A. Yes, sir.

Q. Do you recall what his name was?

A. To the best of my knowledge it was Waller.

Q. Approximately when was this?
A. It was in the summer of 1925.
Q. What, as nearly as you can recall, was his story?
A. He had a set of reference books that were to be given to certain people whose names he had in return for a letter of recommendation about the books, provided the per-
208 son bought the special reference, that was to extend over a period of ten years, I believe.
Q. Were any representations made as to the newness of the Standard Reference Work itself?
A. I had the impression that it was modern and up to date.
Q. From what did you gain that impression, Miss Godfrey?
A. From Mr. Waller's conversation. I don't remember exactly what was said. He said, if I remember very distinctly, he talked about the fact that it was very difficult to keep an encyclopedia up to date; that an encyclopedia was out of date the day it came out. So that would give me the impression it just came out.
Q. Did you sign a contract for the extension service?
A. I did.
Q. Did you receive the Standard Reference Work?
A. I did.
Q. You received some parts of the extension service?
A. Yes.
Q. Have you them now?
A. No.
Q. What did you do with them?
A. I boxed the whole thing up in March 1926 and expressed them back at my own expense, insuring them for $75.00.
Q. Why did you return them, Miss Godfrey?
A. In the first place, I—the first time I had occa-
209 sion to really look up anything in the books the word "Barber of Seville", it was an opera. I was interested in music. It gave a cross reference Seville. I looked up "Seville" but I could not find the word at all. That was the first impression I had of actually using the book. Then later, I do not remember any particular words I looked up, some of the things I looked up were there and some were not. I began to think the book was not what I wanted, after all, and it was not worth spending, I do not know exactly how much it was, sixty dollars for the revision work, for the set of books, if this was not going to contain what I had future occasion to use it for.
Q. Did you write to the company at approximately the time you sent them back to tell them why you sent them back?

A. I wrote them sometime before, asking if my contract might be cancelled and gave them the reason.
Q. Have you a copy of that letter?
A. I have not.
Q. Is any in existence so far as you know?
A. I don't know.
Q. I hand you a paper; will you tell what that is?
A. Check I wrote October 6th, 1925.
Q. That is for whom?
A. Standard Educational Society for $6.30.
Q. What was that check——
210 A. The check was in partial payment——
Q. Just a moment. Was that check honored?
A. Yes.
Q. Your account was depleted to that extent?
A. Yes.
Q. What was the check for?
A. It was for partial payment for the loose-leaf service.
Q. Did the agent tell you, Miss Godfrey, that the books were usually given away when the loose-leaf service was sold for $69.50?
A. No.
Q. What did he say in regards to the usual price of the work, if anything?
A. He gave me some figures but I don't recall exactly what they were.
Q. Did the work usually sell for more or less than $69.50?
A. More. Quite a bit more.
Mr. WINN. That is all the questions I care to ask. I want to offer this check in evidence and ask it be marked "Commission's Exhibit 42."
The EXAMINER. The paper in question which is the check the witness identified will be received and marked "Commission's Exhibit 42."

211 RUTH M. GREINER, was thereupon called as a witness, and having been duly sworn testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please?
A. Ruth Greiner.
Q. You reside in Toledo?
A. Yes. 827 Nevada Street.
Q. What is your occupation, Miss Greiner?
A. Teacher.
Q. In the public schools of Toledo?
A. Yes, sir.

Q. Did there come a time, Miss Greiner, when a person purporting to represent the Standard Education Society called on you?

A. Yes.

Q. Approximately when was it?

A. It was in the summer of 1926.

Q. Did anything happen prior to his visit which you could connect up with his visit?

A. Well, I had received this letter but had paid no attention to it. There was a card inclosed that we were to mail in if we cared to have the agent see us.

Q. I hand you a paper. Will you tell what that is?

212 A. That is a copy of the letter that I received prior to the agent's visit.

Q. Is that a copy of the letter or is that the letter?

A. This is the letter.

Q. This is the letter that you received?

A. Yes.

Q. It is directed to you?

A. Yes, sir.

Q. From whom?

A. Charles E. Knapp.

Q. What is the date of the letter?

A. December 15th, 1925.

Mr. WINN. I offer that in evidence and ask to have it marked "Commission's Exhibit 43."

The EXAMINER. Paper in question will be received and marked "Commission's Exhibit 43."

Q. You say the agent called on you?

A. He did.

Q. What, as near as you can recall, was his story, Miss Greiner?

A. In the first place he approached me saying he had nothing to sell; he had something to give away; and, of course, I listened to his story. He offered this set of encyclopedias. They were to be sent free if I bought this

213 loose-leaf extension service which would extend over a period of ten years. He gave me the impresesion that he was offering just a few sets in the city.

Q. How did he give you that impression, Miss Greiner?

A. It was verbally told me that he was only offering one set, and I have occasion of knowing he was offering them to two of my friends within a radius of a quarter of a mile.

Q. He told that, and that is how you got the impression?

A. Yes. And I had my friends call me later.

Q. He told you he was only giving one in the community though?

A. Yes.

Q. What else, as near as you can recall, did he tell you, Miss Greiner?

A. Well, he led me to believe that this encyclopedia was very up to date, that is as much so as an encyclopedia could be. That the loose-leaf service kept it up to date.

Q. How did he so lead you?

A. Well, he had a copy and it seemed to be very good work. It seemed to be a very good set of books, something that I might be able to use.

Q. You say he led you to believe that the work was a very good encyclopedia?

A. Yes.

Q. Was that from something that he showed you or
214 from something he said to you, or just from his genetal attitude.

A. Well, I would say both.

Q. Did you sign any contract agreeing to purchase the extension service?

A. I did.

Q. Did you receive the free books?

A. I did not, because a few minutes after he left I called the public library to get their opinion of the books and found that they were not what he represented them to be.

Q. I see.

A. So the third day then I sat down and countermanded the order.

Q. Did he say that the public library had recommended the works?

A. Not to my knowledge.

Q. You did not receive the books after you sent this letter cancelling the order?

A. The books came, but I did not accept them.

Q. You don't have them now?

A. No.

Q. What disposition did you direct the expressman to make of them?

A. I told him that I had countermanded the order and that they were to be sent back to the company.

215 Q. Had you been released from your contract with the company?

A. I had not.

Q. How much did you pay to the company?

A. Not a thing.

Q. Nothing at all?

A. No.

Q. I hand you a paper writing containing two pages. Can you tell me what it is?

A. This is a letter that was written by my brother at the bank and stating all the conditions——

Q. We don't care what it states. Just the date of it?

A. July 16, 1926.

Q. To whom is it addressed?

A. Mr. L. A. Williams, of the Standard Education Society.

Q. Did you sign this letter?

A. I did.

Q. Did anyone else sign it?

A. Mr. Greiner signed it.

Q. This brother you referred to?

A. Yes.

Q. This letter was sent to the Standard Education Society?

A. It was sent to Mr. L. A. Williams.

Q. Of the Standard Education Society?

A. Yes.

216 Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit No. 44."

The EXAMINER. The paper in question will be received and marked "Commission's Exhibit 44." It consists of two sheets.

Q. I hand you another paper. Can you tell me what it is?

A. This is a letter dated July 24, 1926, from Mr. L. A. Williams, Standard Education Society, to Mr. Greiner.

Q. Who is the Mr. Greiner to whom it is addressed?

A. My brother.

Q. Is this letter in response to the letter which has just been introduced as Commission's exhibit 44?

A. Yes.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit No. 45."

The EXAMINER. The paper in question will be received and marked "Commission's Exhibit 45."

Q. Did the agent tell you that the Standard Reference Work was usually given away in connection with the sale of the extension service?

A. He did not. He left to believe that very few were given away.

Q. What representations did he make as to the usual price of this work, if any?

A. I don't remember the exact amount. I remember
217 it was very much higher than the price I was getting.

Q. Do you recall the name of the agent who talked with you?

A. Ellmann, I think his name was on the back of the contract. I am not sure that I pronounce it right. Yes, Ellmann.

Q. Did the agent use the names of any prominent educators with whom you are familiar as having recommended the work as near as you can recall?

A. I would not say they were prominent educators. He mentioned several teachers.

Q. Did he mention the name of Mr. Meeks?

A. I don't recall that.

Mr. WINN. I think that is all I have. Have you anything?

The EXAMINER. That is all.

CHAS. MEEK was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. You may state your name.

A. Chas. S. Meek.

Q. You reside in Toledo?

218 A. Toledo.

Q. What is your occupation?

A. Superintendent of Toledo public schools.

Q. How long have you been superintendent of schools in Toledo?

A. This is the eighth year.

Q. Did there come a time, so far as you can recall, when a person or persons purporting to represent the Standard Education Society of Chicago called on you, and as a result of that call you gave them a testimonial or a letter of recommendation covering the Standard Reference Work and Encyclopedia published by the Standard Education Society?

A. I did not, as far as I can remember. My secretary, she takes the same view as I do. I asked her.

Q. Did you ever give to the Standard Education Society or any of its representatives a list of teachers in the city of Toledo in order that the representatives might call on these teachers in the interest of selling them or giving to them the Standard Reference Work?

A. I did not. That I know definitely and specifically that I never in my life gave any agent a list of students' names.

Q. Or teachers?

A. Teachers. I mean teachers. And I have never written anything.

219 Q. And you don't recall specifically a Mr. Waller calling on you sometime in 1925 in regards to this matter at all?

A. No.

Mr. WINN. That is all I have to ask.

The EXAMINER. I have nothing further.

Testimony at Toledo having been concluded, this hearing is now adjourned to Lima, Ohio, Old National Bank Building, ten a. m., May 16th, 1929.

220 Docket No. 1574

LIMA, OHIO, *May 16, 1929.*

Met pursuant to adjournment from Toledo, Ohio, 10:00 a. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Mr. R. H. Winn, for the Commission. No one for the respondents.

DONA MAE TAYLOR was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. You reside in Lima, Miss Taylor?

A. Yes, sir; 801 East Vine.

Q. Did there come a time, Miss Taylor, when a man purporting to represent the Standard Extension University called on you?

A. Yes, sir.

Q. And approximately when was that?

A. In April 1928.

Q. Do you recall the name of the man who called on you?

A. H. H. Baggs.

Q. And what, Miss Taylor, did he want you to do?

A. Take a course in the Standard Extension School—business course; university they called it.

221 Q. And did you agree to take this course?

A. I did one evening; cancelled it the next morning.

Q. Did you sign a contract?

A. I don't know whether I did or not.

Q. Did you sign anything?

A. I know that mother did.

Q. Did you sign a piece of paper for him?

A. I would hate to say, because I don't know; I believe I did, tho.

Q. To the best of your knowledge and belief?

A. I believe I did.

Q. What was to be the price of the course that you were to take?

A. I don't know.

Q. Was it the usual price at which the course was offered?

A. No; it was at a special—it was an introductory course.

Q. You mean the course was a special course or the price was a special price?

A. The price was special.

Q. It was the regular course that you were to take?

A. Yes; the regular course.

Q. I hand you a piece of paper that is dated June 15th, 1928, Miss Taylor; I know that it is not the contract that Mr.

Baggs had when he was at your house, but is that, as near as you can recall and to the best of your knowledge and belief, substantially the same contract, so far as its body is concerned, as the one which Mr. Baggs had when he called on you?

222 A. I believe it is; yes.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit No. 46."

The EXAMINER. The paper will be received and marked "Commission's Exhibit No. 46."

Q. Why, Miss Taylor, were you to receive a special price in connection with this business course?

A. Well, really I don't know, unless it was because of the ten students.

Q. Will you tell us about that, please?

A. Well, he told me that I was to be the tenth student to enroll and he wanted them yet that evening, and mother said that she didn't care about telling him right away, and he said he had to have the tenth student that evening, so she said she would have to have time to decide on it, and he walked around the block, I really believe, and came right back, and he almost forced me to sign; he wouldn't let me say no.

The EXAMINER. One moment, lady! Don't say "he almost forced me", but tell what he did.

A. If I had had any will power I wouldn't have signed, to tell you the truth about it.

Q. What particular value was there, if he told you any?

A. I was promised a position paying a rather enormous sum of money; he said I could get my position any place I wanted it.

Q. I wasn't thinking about that so much as what led

223 you to speak of being the tenth prospective student. Was there any particular efficacy to the ten students?

A. He told me that Leona Miller had signed and she was the ninth and I was to be the tenth one, and that would complete his enrollment of ten students from South High, and he was supposed to get ten from Central, too.

Q. Was the special introductory offer to continue after the ten students were signed?

A. No.

Q. Then you were the last one of the quota in that section?

A. From South High.

Q. You were to get the special introductory offer if you signed?

A. If I signed.

Q. Did you pay anything to Mr. Baggs at the time this contract was signed?

A. Yes, sir; ten dollars.

Q. Have you received that ten dollars back from the company?
A. No, sir.
Q. Have you paid anything more?
A. No; but I was asked to.
Mr. WINN. That is all.

BLANCHE VOELKER was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.
224 A. Blanche Voelker.
Q. And you are also Mrs. Frank Voelker?
A. Mrs. Frank Voelker.
Q. Did there come a time, Mrs. Voelker, when a person purporting to represent the Standard Education Society of Chicago called on you?
A. Yes.
Q. And approximately when was that?
A. The 10th of November 1928.
Q. And do you recall this person's name?
A. I do.
Q. What was it?
A. Mrs. M. A. Thompson.
Q. And what, as nearly as you can recall, Mrs. Voelker, was Mrs. Thompson's story?
A. Well, she came to the door and she seemed to give me the impression that——
The EXAMINER. Just tell us what she said now.
A. In fact, I don't know whether I could tell you word for word; she gave——
Q. As nearly as you can recall that she said?
A. She gave me the impression that she was working for the P. T. A.; that is, for their benefit and for their—to put work out that would be beneficial——
Q. What do you mean by the "P. T. A."?
A. The Parent-Teachers' Association.
225 Q. She told you, did she, that she was helping the P. T. A.?
A. Yes; and she came in; I asked her to come in; it was a very snowy day and I asked her to come in and she gave me the impression that she was giving me an encyclopedia.
Q. Gave you the impression that she was giving you an encyclopedia?
A. Yes.
Q. And how did you get that impression, Mrs. Voelker?

A. She made the statement that she was placing these encyclopedias with just a few of the members of the Garfield P. T. A.

Q. And then did she carry on and explain that statement somewhat?

A. Well, her general conversation was of the P. T. A. work and how she was interested in it and different places she had been with the work.

Q. And was anything said about the price of this encyclopedia?

A. Not at the present time; no; not until after I had signed this contract.

Q. And when you signed the contract, Mrs. Voelker, what did you think that you were signing?

A. She showed me several testimonials and she said she had a card there that she wanted to turn into the company just stating who she had called on.

Q. And was that the card that you signed?

A. No. I believe, however, that I signed the card—in fact, I just don't remember, but I believe that I signed the card and also the contract; after I had signed the card
226 she asked me then to sign the contract.

Q. Did she tell you why you were to sign the contract?

A. Well, in fact, I hardly know; I can't make a clear statement on that.

Q. I believe you testified that up to the time you signed the contract she had mentioned no price at all?

A. No.

Q. Did you read the contract?

A. I am sorry to say I did not.

Q. After you had signed the contract, did she mention the price?

A. Yes. Now, she said, "We are putting these out at such a nominal price that", she said, "no one can afford to be without them, and for that reason we are asking a very small price for the set of books", and she stated the original price was one hundred and ninety-one dollars.

Q. And what was the price at which they were offered to you?

A. $69.50, I think.

Q. Did she say why they were being offered to you at $69.50 when the usual price was $191.00?

A. Yes. They were putting on an advertising campaign for the company—the company was putting on an advertising campaign.

Q. And placing the books with you as a part of that campaign?

A. Yes; and she made the plea that she had two or three others that were interested that she wished to call upon, but they were not at home, and she said she was glad to find me at home. She seemed to have my name, too.

227 Q. Did you receive the books, Mrs. Voelker?

A. I did.

Q. Have you them now?

A. No.

Q. What did you do with them?

A. I sent them back.

Q. Did you receive any of the loose-leaf service?

A. I did.

Q. And have you them now?

A. No, sir; I have not.

Q. What did you do with them?

A. I sent them back collect.

Q. Now, you say that Mrs. Thompson told you, or showed you, rather, several testimonials; what testimonials or what organizations, if any, did she name to you as recommending this work?

A. She gave me the impression—or I think she made the statement—that she had placed already books with the D. A. R., and the Women's Federated Clubs, and several other organizations I don't just recall.

Q. I might name several to you, Mrs. Voelker. Do you recall whether she said the Y. M. C. A.?

A. The Y. W. C. A.

Q. Did she say anything about the Anti-Saloon League?

A. No; she did not.

Q. Did she say anything about the Better Business Bureau?

228 A. No.

Q. Did she say anything about the W. C. T. U.?

A. Yes.

Q. She mentioned the W. C. T. U.?

A. Yes, sir.

Q. What did she say about that?

A. That they already had a set of books.

Q. You said she mentioned the Y. W. C. A.?

A. Yes, sir.

Q. What did she say about that?

A. She said they had a set of books; she said they already had a set of books and were very much pleased with them.

Q. Did she say that these organizations had or would recommend this work?

A. Yes.

Q. Did she say anything about the public library?

A. No; she did not.

Q. Did you give Mrs. Thompson any money?
A. I did not.
Q. Have you paid any money under your contract at all?
A. No.
Q. Have you, so far as you know, been released from your contract?
A. Just verbally.
Q. By whom?
A. Mr. Morton.
Q. And who is Mr. Morton?
229 A. The Better Business Bureau manager.
Q. Where?
A. Lima.
Q. And have you received anything from the company, either verbally or orally, to the effect that you have been released from your contract?
A. No; I have not.
Mr. WINN. That is all.

HELEN HAWK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.
A. Helen Hawk.
Q. You live in Lima, Ohio?
A. Yes, sir.
Q. Did there come a time, Miss Hawk, when a person purporting to represent the Standard Extension University called on you?
A. Yes, sir.
Q. And approximately when was that?
A. I should judge about a year ago.
Q. Some time in 1928?
A. Yes, sir.
Q. And about what season of the year would you say—spring, fall, winter, or summer?
A. In the spring.
230 Q. And do you recall the name of the person who called on you?
A. Mr. Baggs.
Q. And what, Miss Hawk, was Mr. Baggs offering to you, as nearly as you can recall?
A. He was offering a course that was a special price—was giving me a little less than the regular price of the course and it would only last until they had so many subscriptions at South and Central.
Q. Now, you mean the course would only last until they had so many subscriptions?

A. That price—the special price.

Q. And what was the course to be in; was it to be a course in French or——

A. It was a secretarial course.

Q. And what was the price at which it was offered to you?

A. $135.00.

Q. Did Mr. Baggs make any representations as to the $135.00 that you remember particularly?

A. He said it was a special price that would only last for a short time.

Q. And what were you to receive in the way of equipment?

A. A typewriter and books for the course.

Q. Did Mr. Baggs represent to you the cost of the typewriter?

A. Yes; he said it was a new one and the price of new ones was about one hundred dollars.

231 Q. And the price of the typewriter was included in the $135.00 that you were to pay?

A. Yes, sir.

Q. And did Mr. Baggs state the usual price of the course; what it would cost to those whom he obtained as students after this special price was discontinued?

A. I believe $250.00.

Q. Did you sign a contract, Miss Hawk?

A. Yes, sir.

Q. I hand you a paper writing, Miss Hawk; I know that it is not the contract that you signed; it is marked "Commission's Exhibit No. 46"; can you tell me whether or not this is, in effect, as near as you can recall, a facsimile of the contract which you signed?

A. Yes; I believe it is.

Q. You believe it is?

A. It looks like the one I signed.

Q. Did you pay Mr. Baggs any money?

A. Yes; I paid the down payment of $35.00.

Q. Did you complete the course?

A. No; I didn't even start it.

Q. Was the typewriter sent to you?

A. Yes, sir.

Q. Have you it now?

A. No, sir; I sent it back.

Q. Have you paid anything in addition to the $35.00?

232 A. No, sir; I didn't pay anything more.

Q. Has your $35.00 been returned to you?

A. No; it has not.

Q. So far as you know, have you been released from your contract?

A. I took it up with the Better Business Bureau and Mr. Morton said he would take care of it for me.

Q. Have you received any word from the company to the effect that you have been released from your contract?

A. No; I have not.

Q. I hand you a paper writing. Can you tell me what this is, Miss Hawk?

A. It is a—January 19th, 1929; it is written to me from the Standard Extension University.

Q. Is it a letter?

A. Yes, sir.

Q. And did you receive it?

A. Yes, sir.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit No. 47."

The EXAMINER. The paper in question will be received and marked "Commission's Exhibit No. 47."

Mr. WINN. That is all.

HENRY H. BAGGS was thereupon called as a witness and, having been duly sworn, testified as follows:

233 Direct examination by Mr. WINN:

Q. Give your full name to the reporter, please.

A. Henry H. Baggs.

Q. And you reside in Lima?

A. Yes, sir.

Q. And what is your occupation, Mr. Baggs?

A. Salesman.

The EXAMINER. For what?

A. The Standard Extension University and the Continental Casualty Company, Chicago; I have been with the Continental since '17 here.

Q. How long have you represented the Standard Extension University?

A. Well, that has been four years now.

Q. And have you been in Lima all that time?

A. Yes; this is my home; I have been out there since July of '15, where I live now.

Q. Did you sell this course to a Miss Dona Mae Taylor here in Lima?

A. Yes; I believe that is the woman on Michael Avenue.

Q. Did you also sell the course to a Miss Helen Hawk?

A. Yes, sir.

Q. I hand you a copy of a paper marked "Commission's Exhibit No. 46"; can you tell me what that is?

A. It is a copy of an enrollment.

Q. Of what?

A. Well, it don't say whose it is.

234 Q. Enrollment of what?

A. Standard Extension University.

Q. I notice that it is signed "H. H. Baggs"; is that your signature, Mr. Baggs?

A. Yes.

Q. And I notice that it is dated June 15th, 1928?

A. Yes.

Q. Would you say from that that you had filled out that enrollment form on June 15th, 1928?

A. Yes, sir; I presume I did.

Q. And what would you say was the purpose for which you filled out that enrollment blank on June 15th, 1928?

A. This one, you mean?

Q. Yes.

A. Well, just as a copy of the receipt for what they had paid, and, of course, the subjects; they had the regular course instead of the substitutes; that is all that is for, and a receipt, you might say.

Q. Would you say that you were using that contract in connection with the talk with a prospect at the time you filled it out?

A. I don't know that I just understand.

Q. (Question read.)

A. Well, this is one I filled out, that is, a copy.

Q. That is one you filled out?

A. Yes, sir.

Q. Do you make a practice of filling them out when you are not talking with a prospect?

235 A. No.

Q. You would say, then, that you had that contract and were using it on June 15th, 1928, in talking with a prospect for enrollment in the Standard Extension University?

A. Yes; I will have to admit that I had that contract.

Q. You would say, then, that you were using it at that time for that purpose?

A. Yes. I might have had both contracts; there are different kinds; I don't know how that was now, because I was never advised about it.

Q. Are you using that same type of contract now?

A. Well, it is just the same, only just the writing—the introductory offer.

Q. Will you tell what the difference is between the contract that you have there marked "Commission's Exhibit No. 46" and the contract which you are using at the present time?

A. Well, there isn't anything different, only this says in red letters "Special introductory enrollment" and "This is

a lifetime scholarship", and the one I am using now just says "Scholarship course", I believe.

Q. Are you able to say when you stopped using the type of contract a copy of which is before you marked "Commission's Exhibit No. 46"?

A. Well, sir, I would hate to say, because I don't know.

Q. You would hate to say when?

A. Yes.

236 Q. But you did use that contract on June 15th, 1928?

A. Yes. Now, I may have had some of the others shipped to me before then, but I don't know. I never paid any attention to that part of it because everything was the same, you know, the subjects and everything. I wouldn't want to say anything to do an injustice because I don't know.

Q. Why would you have been using that type of contract on June 15th, 1928, or on any other time if you had previously received from the Standard Extension University a new type of contract in which the words "This is a special introductory enrollment; this is a life-time scholarship" were not used?

A. The only way I can answer that, to be fair, is, you know, I have a desk downstairs there in the dining room; I have sort of a bookcase where I keep my supplies upstairs, and sometimes I run short on applications; well, I would go up and I would dig around and find some; that's the reason why I don't know about using them [indicating], you know, when I had others; whether I had the other on hand, too, at the time I don't know. You see, understand, they never advised me "Don't you use a contract", or "are you out", or "destroy them", or something like that.

Q. What kind of contracts are you speaking about when you say they never advised you not to use a contract, or "are you out" or "destroy them"?

A. This here [indicating].

237 Q. You are referring to the paper marked "Commission's Exhibit No. 46" are you not, that paper that is before you?

A. Yes, sir.

Q. Then I am given to understand, Mr. Baggs, from your testimony that if you had copies of the enrollment contract which are identical with the one marked "Commission's Exhibit No. 46" at the time you received the new form of contract, which does not contain in red letters the words "Special Introductory Enrollment", you were not advised by the Standard Extension University to destroy or not to use the old type of contract marked "Commission's Exhibit No. 46"?

A. Not that I have any remembrance of.

Q. They merely sent you the new type of contract and did not say anything about the old one at all?

A. No; not that I have any remembrance of at all; I didn't think that that made very much difference because I never paid no attention to that.

Q. If you were interviewing a prospect today, Mr. Baggs, would you have any hesitancy to use the type of contract which is marked "Commission's Exhibit No. 46"?

A. This one [indicating]?

Q. Yes.

A. Well, I suppose not. It seems like I shouldn't on account of the introductory offer; they are not new now; they are not introducing it, unless it would be in a new field. You see, it is introductory where they just start the
238 course—the school. At the time that started there was a new school, the way I understand.

Q. Then I get it from that that you would not use that type of contract?

A. No, sir; I wouldn't think so, about being introductory, because it is not being introduced.

Q. If the Commission had not talked with you about this matter, Mr. Baggs, would this question have ever presented itself to you so that you would have had any scruples against using the special introductory contract?

A. How is that question, Mr. Winn? That means you, don't it?

Q. Yes.

A. Well, I don't know; I don't think so.

Q. It wouldn't have presented itself to you?

A. No.

Q. So far as you are able to say?

A. It was never brought forcibly to me, anything about that part of it, where it says "Introductory offer" or "Introductory enrollment."

Q. If yesterday morning, which was before the time, of course, that the Commission's attorneys talked with you, you had gone out to see a prospect and had had a special introductory enrollment contract in your pocket and had filled it out, would you have permitted the prospect to sign that contract if you had discovered prior to the signing that it was a special introductory contract rather than an enroll-
239 ment contract?

A. Well, sir, I don't believe I would have thought about it.

Q. You don't believe you would have thought about it?

A. I don't believe I would.

Q. You would have let them sign it without having had it presented to you at all?

A. Inasmuch as I was not advised not to use it, I don't believe I would have thought of it, because the enrollment was the same. What I am thinking about is the subject that I am selling.

Q. Mr. Baggs, is there any difference between the new type of contract and the type of contract marked "Commission's Exhibit No. 46" except in the letters printed in red ink in the top margin?

A. No; that is all I have ever noticed particularly; I guess that is all there is.

Q. You said a little while ago that you would not use that type of contract now because they are not introducing this course any more in this locality, but that you probably would use it if they were opening a new field. I understood you to say that; is that correct?

A. Well, no; I didn't say that I would; it would look like to me that would be all right in a new field where they were introducing it; whether that is right or not I don't know. It seems like that ought to be the way it would be.

240 Q. Now, inasmuch, Mr. Baggs, as there is no difference between the two types of contract except in the statement that "This is a special introductory offer", would you say that this actually is a special introductory offer?

A. I am afraid you will have to repeat.

Q. (Question read.) Perhaps I can word it a little differently: Mr. Baggs, what is the price of the course as contained in the contract which you are now using?

A. $135.00 terms; $121.50 cash.

Q. And what is the price of the course according to the special introductory enrollment contract?

A. It is the same.

Q. Then you would say it is not a special introductory contract as a matter of fact?

A. Well, not by that.

Q. Then, with that in mind, would you then desire to use the type of contract marked "Commission's Exhibit No. 46" even in a new territory that was just being opened up?

A. No; I wouldn't think so.

Q. Do you know of any instances, Mr. Baggs, in which the course offered by the Standard Extension University has sold for more than $135.00?

A. No; I don't know of any.

Mr. WINN. That is all.

The EXAMINER. The hearing at Lima is closed and we will adjourn to reconvene Monday, May 20th, 1929, at

241 10:00 a. m., daylight savings time, 2246 Transportation Building, 608 South Dearborn Street, Chicago, Illinois.

242 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATON SOCIETY, ET AL.

CHICAGO, ILL., *Monday, May 20, 1929.*

Met pursuant to adjournment at 10:00 o'clock a. m.

Before: E. M. AVERILL, Examiner.

Appearances: Robert H. Winn (Washington, D. C.), for the Federal Trade Commission. James McKeag for the respondents.

243 PROCEEDINGS

IRMA A. BUELL, called as a witness, after being first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you give your full name to the reporter?
A. Irma A. Buell.
Q. Where do you reside?
A. Joliet, Illinois.
Q. And you are here today in response to a subpœna?
A. Yes.
Q. Directed to you by the Federal Trade Commission in the matter of the Standard Education Society?
A. Yes.

Mr. WINN. I have no further questions to ask this witness.

By Examiner AVERILL:

Q. Where did you come from?
A. Joliet, Illinois.
Q. How far is that from Chicago?
A. About forty miles.
Q. And you are going to return there?
A. Yes, sir.

Mr. McKeague. I have no questions.

(Witness excused.)

HARRY A. CRAWFORD, called as a witness, after being
244 first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you give your full name to the reporter?
A. Harry A. Crawford.
Q. Where do you reside?
A. Galesburg, Illinois.
Q. Are you here today in response to a subpœna directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. I am.
Q. Are you married?
A. Yes.
Q. I hand you a paper in writing; can you tell me what it is?
A. Yes; that is a letter we received about September 28, 1927, from Mr. Charles E. Knapp.
Q. To whom is the letter addressed?
A. My wife, Mrs. H. A. Crawford.
Q. Was that letter received by your wife?
A. It was.
Q. Did, at any time, a set of books known as Standard Reference Work, come to your home?
A. It did.
Q. Have you those books now?
A. No; they have been returned to the Standard Education Society.
245 Q. Do you know of your own knowledge whether any money was paid by you or by your wife to the Standard Education Company?
A. Yes; the $9.50 was made as a down payment by my wife. We have a joint checking account, and I have a canceled check, but not with me.

Cross-examination by Mr. McKeag:

Q. Have you the canceled check?
A. I have not it with me.
Q. Do you know who cashed the check?
A. I could not tell you offhand. It went through the usual clearing-house procedure, and we have the check at home. The check was drawn to the Standard Education Society.
Q. Your wife's dealings were with Charles E. Knapp?
A. The letters were from Charles E. Knapp, but the dealings were with Mr. Derskin, a representative of the Standard Education Company.
Q. Do you know if he was the agent of the Standard Education Society or Charles E. Knapp?
A. I judge they both were.
Q. You just assume that?
A. I assume that.
Q. You never talked to Standard Education Society direct, or anybody connected with them?
A. Only these two. I corresponded with Mr. Knapp
246 and met Mr. Derskin once.
Q. Do you know that either of these gentlemen has any connection with Standard Education Society at all?
A. I know in regard to the transaction we had with both of them and that the set of books arrived.
Q. Standard Education Society books?
A. Yes.

Q. It is customary, is it not, for any book dealer to handle all kinds of books?

A. I should assume so.

Mr. WINN. I want to offer this letter, which is addressed to Mrs. Crawford, in evidence.

Mr. MCKEAG. I object to any correspondence from Charles E. Knapp, because he is an individual book dealer, and we have no control of him, and he is not the agent of Standard Education Society in any way, shape, or form.

Mr. WINN. I desire to have the letter introduced because we expect to show later that Mr. Knapp is the agent of Standard Education Society; and if he is not so shown, this exhibit and all other corresponding exhibits may be stricken.

Mr. MCKEAG. All right, with that understanding——

Examiner AVERILL. Objection overruled, and the paper in question will be received and marked "Commission's Exhibit 48."

(Said paper was received in evidence and marked "Commission's Exhibit No. 48.")

247 Mr. WINN. That is all I have, Mr. Crawford.

(Witness excused.)

ULYSSES SHERMAN GRANT, called as a witness, after having been first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you please give your full name to the reporter?

A. Ulysses Sherman Grant.

Q. What is your address?

A. Evanston, Illinois.

Q. You are here today in response to a subpoena directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. I am.

Q. What is your occupation?

A. Geologist.

Q. Do you have any other occupation?

A. Professor at the Northwestern University.

Q. Did there come a time, Professor Grant, when a cyclopedia known as Standard Reference Work was brought to your attention?

A. Yes.

Q. Can you tell us the connection, the circumstances surrounding that occurrence?

A. I have not the full details in my mind, but I did some editorial work for them in regard to some articles in

248 this cyclopedia some years ago and later—you have the correspondence there—there was some correspondence regarding a recommendation I wrote for this work.

Q. Did you write a recommendation for this work?
A. I did.
Q. And approximately when was this?
A. I think it was about 1916 but I would not be absolutely sure as to the date.
Q. And later you corresponded with the company?
A. Later I had correspondence with the company. They evidently were not satisfied with the recommendation I wrote and they wrote asking about another.
Q. I hand you a letter composed of two pages and will ask you to state what it says?
A. That is a letter from the Standard Education Society dated September 23, 1920, in reference to a letter I wrote——
Q. And when was this letter written?
A. September 23, 1920.
Mr. WINN. I offer this letter in evidence and ask that it be marked "Commission's Exhibit 49."
Mr. MCKEAG. I have no objection.
Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 49", consisting of two pages.
(Said paper was received in evidence, marked
249 "Commission's Exhibit 49.")

By Mr. WINN:

Q. Professor Grant, I hand you another paper in writing; can you tell me what that is?
A. That is a letter, carbon copy of a letter written by myself under date of November 13, 1920, in answer to this letter which has just been shown me.
Q. Is that a duplicate original of a letter you wrote to the company?
A. To the best of my knowledge and belief it is.
Q. And to the best of your knowledge and belief it was in the machine at the same time that the original was in the machine that was mailed to the company?
A. Yes.
Mr. MCKEAG. I have no objection.
Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 50."
Examiner AVERILL. The same will be received and marked "Commission's Exhibit 50."
(Said paper was received in evidence, marked "Commission's Exhibit 50.")

By Mr. WINN:

Q. I hand you another paper and will ask you if you can tell me what that is.

A. That is a copy of a letter which I wrote the Standard
250 Education Society on October 6, 1926.

Q. That letter was also, to the best of your knowledge and belief, in the machine at the same time the original was?

A. Yes.

Q. And you sent the original?

A. Yes.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 51."

Mr. MCKEAG. I have no objection.

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 51."

(Said paper was received in evidence and marked "Commission's Exhibit 51.")

By Mr. WINN:

Q. I hand you another paper; can you tell me what that is?

A. That is a letter from Standard Education Society to me dated October 7, 1926, apparently in answer to the last letter.

Mr. WINN. I offer that in evidence and ask that that be marked "Commission's Exhibit 52."

Mr. MCKEAG. I have no objection.

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 52."

(Said paper was received in evidence, marked "Commission's Exhibit 52.")

By Mr. WINN:

Q. I hand you another paper in writing; can you
251 tell we what that is?

A. That is a letter received from John A. Comstock, dated February 22, 1928.

Q. And received by you?

A. Received by me, addressed to me.

Mr. WINN. I offer that in evidence.

Mr. MCKEAG. I object to it on the ground that it has no probative value here and is entirely immaterial, and it is in effect putting some evidence of a man who is not present here to be subject to cross-examination. It is hearsay, and I object to it.

Mr. WINN. I offer it for what it is worth. It indicates, at least, that Prof. Grant has received a complaint regarding the use of his name in connection with the sale of this work.

Examiner AVERILL. I think the objection is sound, and the objection is sustained.

Mr. WINN. Then I will offer it on the basis that hearings will be held in Los Angeles and Dr. Comstock will be placed

upon the stand and an opportunity will be given for cross-examination, and this is offered at this time merely to show that it was received by Prof. Grant.

Examiner AVERILL. I would be perfectly willing to mark it for identification—that is, to show that the person was the recipient of this letter, and that the Prof. Grant who is testifying is the party to whom this letter was addressed, but until it is connected up I cannot admit the letter. I will mark it for identification. The paper in question will be marked for identification "Commission's Exhibit 53."

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(Said paper was marked "Commission's Exhibit 53" for identification.)

By Mr. WINN:

Q. Prof. Grant, do you know in what manner the Standard Education Society used any recommendation from you?

A. I have copies of other letters of this same type as that just presented showing they were using my name in recommendation of the work, and I have seen circulars such as you have there; that constitutes my knowledge.

Q. I hand you a paper marked "Commission's Exhibit 11."

A. On the back of this is a statement which purports to have come from me.

Q. Will you read the statement, please?

A. "Northwestern University. I find the Standard Reference Work interesting and reliable in the highest degree, and I am particularly pleased with the upkeep service which makes it much more useful and valuable than the old style of cyclopedia."

Q. Did you ever, to the best of your knowledge and belief, permit the use of a testimonial worded as that testimonial is worded?

A. To the best of my knowledge and belief, I never wrote that and never permitted its use; not this particular statement.

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Cross-examination by Mr. MCKEAG:

Q. Prof. Grant, in your correspondence with Standard Education Society you authorize a testimonial as indicated in this correspondence?

A. Yes.

Q. The correspondence appearing on the back of exhibit 11 is substantially in the same words, is it not?

A. No; I think not.

Q. You think there is some difference?

A. I think there is some difference.

Q. There is some similarity, is there not?

A. Yes; it is a letter of recommendation, sure.

Q. And if you had been asked at that particular time to have given this particular recommendation, you would probably have done so?

Mr. WINN. I object to that.

Examiner AVERILL. Which particular recommendation?

Mr. WINN. On the back of exhibit 11.

Mr. MCKEAG. Yes.

Mr. WINN. I object to that.

Examiner AVERILL. I think that does call for a conclusion as to what the witness would have done and the objection is sustained.

Mr. MCKEAG. Well, I withdraw the question.

Q. Do you remember whether you had any other or
254 further correspondence with the Standard Education Society or not?

A. The only correspondence I have had since 1920 that I remember is here. Not all the letters have been put in evidence, but the essential ones.

Q. And in none of the other correspondence was there any mention made of additional or further testimonials on your behalf?

A. Not to my knowledge or belief.

Q. And you did review certain articles appearing in Standard Reference Work for Standard Education Society?

A. Yes; I cannot remember all of the details. It was some educational work on some of the articles.

Q. Some articles appearing about some subject in which you are especially interested?

A. Yes.

Redirect examination by Mr. WINN:

Q. The letters which have been introduced, Prof. Grant, you mentioned as being of essential character. They are all the correspondence which you have had with the Standard Education Society since 1920 to the best of your knowledge and belief?

A. I think I had better check that. Yes; those four letters are all to the best and knowledge and belief that I have had from or sent to the Standard Education Society since 1920.

Q. When, to the best of your recollection, did you do the editorial work which has been spoken of, for the Stand-
255 ard Education Society?

A. My recollection is about 1916, but it is not very definite.

Q. And the work which you recommended and the testimonial which you gave were given approximately when?

Mr. MCKEAG. The letters show.

Mr. WINN. It shows in the exhibits, but, in view of your questions, I just wanted to bring that out in redirect.

A. I think the first was given probably about that date, 1916, and the second one, that is the authorization to use—the second one is dated 1920.

(Witness excused.)

JOHN PAUL GOODE, called as a witness, after having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you state your full name, please?

A. John Paul Goode.

Q. And you reside where?

A. 6227 Kimbark Avenue, Chicago.

Q. And you are here today in response to a subpoena directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. Yes.

Q. What is your occupation?

A. I am professor emeritus of the University of Chicago.

256 Q. Did there come a time, Prof. Goode, when you had some correspondence and some dealings with Standard Education Society of Chicago?

A. Yes.

Q. Can you tell us the circumstances surrounding this occurrence as it was first brought to your attention?

A. The first dealings that I had that I remember were with the society, when it took over the manuscript of a cyclopedia which had been prepared by Prof. George P. Aiton, of Minnesota, and I was asked for a recommendation of this cyclopedia. Do you want the details in connection with that?

Q. Yes; please.

A. I had known Mr. Aiton for a number of years and was very closely related to him, and I saw the way in which he was working at this cyclopedia for high-school use and it was with that knowledge that I wrote the so-called "letter of recommendation."

Q. And you say that was approximately when?

A. From the subsequent correspondence it seems it must have been about 1911. My memory of it was that it was earlier than that.

Q. And you wrote a testimonial for use in connection with this work?

A. Yes.

Q. I hand you a paper and will ask you to tell me what that is.

A. A copy of a letter to Mr. Stanford, of Standard
257 Education Society, September 29, 1924.

Q. And it was written by whom?
A. By me.
Q. And that is a duplicate original?
A. Yes.
Q. And the original was sent to Mr. Stanford?
A. Yes.
Q. Well, look at that letter. Can you tell whether or not a previous letter—that is, a letter written a comparatively short time prior to the date of that letter—had been sent to Standard Education Society by you?
A. Yes; it reads here, "Several weeks ago I wrote your company asking for copies of advertising in which my name was used."
Q. Do you have a copy of the letter you sent previously?
A. No; I do not.
Q. So far as you know, there is none in existence?
A. I find nothing in my files.
Q. Can you tell us what was in the previous letter, in substance?
A. So far as I can tell, I knew of advertising in which my name was used, and I wanted copies of it.
Mr. WINN. I offer this letter in evidence and ask that it be marked "Commission's Exhibit 54."
Mr. MCKEAG. We know nothing about it, but I am not objecting.
Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 54."
258 (Said paper was received in evidence and marked "Commission's Exhibit 54.")

By Mr. WINN:

Q. I hand you another paper; will you tell me what that is?
A. That is a letter from the Standard Education Society, dated August 13, 1924, and signed by Mr. McAvon.
Q. That is from the Standard Education Society to you?
A. Yes.
Q. And you received it, of course?
A. Yes.
Mr. WINN. I offer that paper in evidence.
Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 55."
(Said paper was received in evidence and marked "Commission's Exhibit 55.")

By Mr. WINN:

Q. I show you this paper and will ask if you can tell us what that is?

A. That is a letter from the Standard Education Society, dated October 14, 1924, to me, and received by me.

Q. Was there an enclosure with that letter?

A. Yes.

Q. What was the enclosure?

A. The enclosure is a copy of a letter written on the
259 stationery of the University of Chicago, dated October 7, 1920.

Q. Is it over your signature?

A. My signature appears.

Q. Is this a facsimile of your signature?

A. Yes.

Q. Did you ever write that letter?

A. No; not as this letter stands.

Q. Did you write any part of this letter?

A. Yes; two parts.

Q. Will you tell us what parts of this letter?

A. The second part of this letter begins "Out of the mass of human knowledge the editors have chosen wisely." I remember having written that sentence about Mr. Eiton's work some years before.

Q. Is that a part of the testimony which you have testified you had written in approximately 1911?

A. Yes; that seems to be the date, 1911. But this is 1920.

Q. Is there any other portion of that letter which you recognize?

A. I think the first sentence in the letter I may have written, but I am not sure. "I am very glad to have heard from you once more; it is particularly gratifying to know that you are reaching out into new fields of usefulness." I think that part I may have written.

Q. And approximately when?

A. That I cannot tell. It must have been some time
260 later. I have not the date, but it must have been much later.

Q. Much later than 1911?

A. Yes.

Q. Now, are there any other portions of the letter?

A. The letter is composed of other phrases. There are other phrases in here, but nothing I would recognize.

Q. And you are positive you did not write those other phrases?

A. Yes; as nearly as I can be positive, and the signature is not my style.

Q. "Yours very sincerely." That is not your style?

A. That is not my style.

Q. That is not used by you?

A. No. The letter is made up of two sentences, possibly two sentences, separated years apart, and this has been com-

posed and is not a letter which I wrote or that I knew anything about.

Mr. WINN. I offer this letter and its enclosure in evidence and ask that it be marked "Commission's exhibits 56 and 56a", being of three pages.

Mr. MCKEAG. I have no objection.

Examiner AVERILL. The paper in question will be received, consisting of three pages in all, and will be marked "Commission's Exhibit 56" for the first two pages and "56a" for the third page or the enclosure which is attached thereto.

(Said papers were received in evidence and marked
261 "Commission's Exhibit 56 and 56a.")

By Mr. WINN:

Q. I hand you another paper. Can you tell me what it is?

A. That is a letter from Mary E. Rich, dated November 28, 1925, addressed to me and received by me.

Mr. WINN. I ask that that be marked for identification "Commission's Exhibit 57."

Examiner AVERILL. The paper in question will be marked for identification "Commission's Exhibit 57."

(Said paper was marked for identification "Commission's Exhibit 57.")

By Mr. WINN:

Q. I hand you another paper. Can you tell me what it is, sir?

A. Copy of a letter written by me December 4, 1925, to Standard Education Company.

Q. And you signed that letter, the original of this, and this is a copy; it is a duplicate original?

A. A duplicate of the original.

Mr. WINN. I offer that in evidence as Commission's exhibit 58.

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 58."

(The said paper was received in evidence and marked "Commission's Exhibit No. 58.")

By Mr. WINN:

Q. I hand you another paper, with two other pieces
262 of paper attached; can you tell me what they are?

A. The first is a letter addressed to me, dated December 9, 1925, signed by H. M. Stanford and received by me, and the second is a copy of the same letter that has been introduced hitherto, dated October 7, 1920.

Mr. WINN. The letter states that it was enclosed, and in order not to load up the record more than is necessary I won't

introduce the enclosures. I offer the letter as Commission's exhibit 59, with the understanding that one of the enclosures spoken of in this letter is identified as Commission's exhibit 56. I only offer this letter and ask that it be marked "Commission's Exhibit 59."

Examiner AVERILL. The letter in question will be received in evidence and marked "Commission's Exhibit 59."

(Said letter was received in evidence and marked "Commission's Exhibit 59.")

By Mr. WINN:

Q. Now, I hand you another paper. Can you tell me what that is?

A. That is a copy of a letter written by me December 21, 1925, to H. M. Stanford, Standard Education Society.

Q. In that letter you refer to a previous letter; is that true?

A. Yes.

Q. And what was the date of that previous letter?

A. "I wrote you on November 17, 1924, as follows."

Q. Now, was that letter which you wrote November
263 17, 1924, mailed to Standard Education Society?

A. No, sir. Shall I read the sentence which follows?

Q. Yes.

A. "I have given a copy of this letter of November 17, 1924, and because of an error in typewriting I did not send this letter, intending to have my secretary rewrite it, but it went into the files instead of being sent to you. It is not too late, however, to send it on."

Q. And now you have sent in this letter a copy of a previous letter?

A. Yes.

Q. And you mailed the letter which is the duplicate original of this to Standard Education Society?

A. Yes.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 60."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 60."

(Said paper was received in evidence and marked "Commission's Exhibit 60.")

By Mr. WINN:

Q. I now hand you another paper and enclosure, and will you tell me what that is, sir?

A. The first is a letter from H. M. Stanford, of Standard Education Society, dated January 4, 1926, addressed
264 to me and received by me, and with it an enclosure bearing date of January 4, 1926, headed "A request", and with the signature of Standard Education Society.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibits 61 and 61a."

Mr. MCKEAG. I have no objection.

Examiner AVERILL. The papers in question will be received and marked "Commission's Exhibits 61 and 61a."

(Said papers were received in evidence, marked "Commission's Exhibits 61 and 61a.")

By Mr. WINN:

Q. I hand you another paper, Professor Goode, and will ask you if you can tell me what it is?

A. That is a letter dated June 5, 1926, from Albert R. Brunker, of Chicago.

Q. And received by you?

A. Received by me.

Mr. WINN. I ask that it be marked for identification only.

Examiner AVERILL. The letter in question will be marked for identification only "Commission's Exhibit 62" for identification.

(Said paper was marked for identification "Commission's Exhibit 62.")

By Mr. WINN:

Q. I hand you another paper, Professor Goode, and will ask you to tell me what it is, please?

265 A. Copy of a letter written by me June 11, 1926, to Standard Education Society, attention of Mr. Stanford.

Q. And it is a duplicate original of a letter?

A. A duplicate of the original letter sent.

Q. And you sent that original letter?

A. Yes.

Mr. WINN. I will ask that be marked "Commission's Exhibit 63" and received in evidence.

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 63."

(Said paper was received in evidence, marked "Commission's Exhibit 63.")

By Mr. WINN:

Q. I hand you another paper and will ask you to tell me what it is, sir.

A. That is a letter from Standard Education Society, dated June 14, 1926, signed by Mr. Hugh H. Ward, addressed to me and received by me.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 64."

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 64."

(Said paper was received in evidence and marked "Commission's Exhibit 64.")

266 By Mr. WINN:

Q. I hand you another paper and ask you to please tell me what that is.

A. That is a letter addressed to me, dated September 28, 1926, and signed by Nelson C. Brown, of Syracuse.

Q. And you received this letter?

A. I did.

Mr. WINN. I offer it for identification only.

Examiner AVERILL. The paper in question will be marked for identification, "Commission's Exhibit 65."

(Said paper was marked for identification "Commmission's Exhibit 65.")

By Mr. WINN:

Q. I hand you another paper; can you tell me what that is?

A. That is a copy of a letter written by me on October 15, 1926, to Standard Education Society, attention Mr. Stanford.

Q. That is a duplicate of the original?

A. A duplicate of the original letter.

Q. And you sent the original?

A. Yes.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 66."

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 66."

267 (Said paper was received in evidence and marked "Commission's Exhibit 66.")

By Mr. WINN:

Q. I hand you two papers; can you tell me what they represent?

A. A letter addressed to me, dated October 15, 1926, and signed by H. M. Stanford of the Standard Education Society and received by me.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 67."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 67", consisting of two sheets.

(Said paper was received in evidence and marked "Commission's Exhibit 67.")

By Mr. WINN:

Q. I hand you another paper and will ask you if you can tell me what that is, sir?

A. That is a copy of a letter written by me October 21, 1926, addressed to H. M. Stanford, Standard Education Society.

Q. There are three enclosures mentioned in that letter, Prof. Goode. Did you send those enclosures to Standard Education Society?

A. Yes; I did.

Q. I hand you three papers. Can you tell me, the
268 first is marked "Commission's Exhibit 65" for identification and you have identified it as a letter received by you from Nelson C. Brown of Syracuse University?

A. This is the original.

Q. Of what?

A. Of the first enclosure.

Q. And you sent a copy of this letter to Standard Education Society in this letter?

A. Yes. The next is a copy of a letter from me dated October 5, 1926, addressed to Mr. Nelson C. Brown, of Syracuse University.

Q. Was a copy of that sent with your letter of October 21?

A. A copy was sent; yes.

Q. As an enclosure with your letter of October 21st?

Examiner AVERILL. When he says a copy of that, is he referring to the letter marked for identification?

The WITNESS. No, sir. The third letter is from Nelson C. Brown dated October 11, 1926, addressed to me and received by me.

By Mr. WINN:

Q. And was a copy of that letter enclosed with a letter of October 21 to Standard Education Society?

A. Yes.

Mr. WINN. I offer the four papers in evidence and ask that they be marked "68, 68a, 68b", and the letter marked "Exhibit 65" for identification be marked "Commission's Exhibit 65."

Mr. MCKEAG. I have no objection to Mr. Goode's
269 letter of October 21, 1926, but I object to the enclosures being introduced in evidence as correspondence between other parties over whom we have no control and being self-serving statements.

Mr. WINN. Prof. Goode has testified that exact copies of these other three letters were sent by him to Mr. H. M. Stanford, president of the Standard Education Society in October, 1926, and were brought to the attention of Mr. Stanford and the Standard Education Society has had an opportunity to go into the correctness of the statements made by Mr. Brown in those two letters and I offer them in evidence.

Mr. MCKEAG. There is no objection to them going in for the purpose of showing they were called to the attention of Standard Education Society, as to statements made by these

gentlemen to each other, but I do not believe they are admissible.

Examiner AVERILL. As there is no objection to the introduction of these letters, if they are restricted solely to show that the alleged testimonial of Prof. Goode was called to the attention of Standard Education Society, I shall receive the papers in evidence for that sole purpose and they will be admitted in evidence and marked, the letter of October 21, 1926 from Prof. Goode to M. H. Stanford of Standard Education Society will be marked Commission's Exhibit 68. The letter heretofore marked for identification "Commission's Exhibit 65" will be received for the purpose already indicated and marked "Commission's Exhibit 68a." The
270 letter of October 5, 1926, from Prof. Goode to Nelson C. Brown of Syracuse, New York, will be marked "Commission's Exhibit 68b" and the letter of October 11, 1926, from Nelson C. Brown to Prof. Goode will be marked "Commission's Exhibit 68c."

(Said papers were received in evidence and marked "Commission's Exhibits 68, 68a, 68b, and 68c.")

By Mr. WINN:

Q. I hand you another paper, Prof. Goode; can you tell me what that is?

A. That is a letter from Mr. H. M. Stanford of Standard Education Society, dated October 21, 1926, addressed to me and received by me.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 69."

Mr. MCKEAG. I have no objection.

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 69."

(The said paper was received in evidence, marked "Commission's Exhibit 69.")

By Mr. WINN:

Q. I hand you another paper; can you tell me what that is?

A. That is a letter from John A. Comstock of Los Angeles, addressed to me, dated February 22, 1928, and received by me.

Mr. WINN. I offer this in evidence for identification purposes only and ask that it be marked "Commission's
271 Exhibit 70" for identification.

Examiner AVERILL. The paper in question will be marked for identification "Commission's Exhibit 70."

Mr. WINN. That is all I have, Mr. McKeag.

Mr. MCKEAG. I don't believe I have any cross-examination.

(Witness excused.)

BLANCHE GUERTIN called as a witness, after being first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you state your name?
A. Blanche Guertin.
Q. What is your address?
A. St. Anne, Illinois.
Q. Are you the same Mrs. P. J. Guertin to whom a subpena was addressed by the Federal Trade Commission in the matter of Standard Education Society?
A. Yes.
Q. And you are here today in response to that subpena?
A. Yes.
Q. Have you given your address?
A. Yes.
Q. Did there come a time when a person purporting to represent Standard Education Society called upon you?
A. Yes.
272 Q. And approximately when was this?
A. I would say about the middle of July 1928.
Q. Do you recall the name of this person?
A. I think it was a Miss or Mrs. Thompson.
Q. Do you recall her initials?
A. C. M. or M. C., perhaps, but I am not really certain.
Q. And what, as nearly as you can recall, was this person's story?
A. Well, she told me that I was selected, she said that my name had been given to her as a person who would be interested in receiving this set of books from the Education Society as a means of advertising. They were placing these books among a few representative women in my town and that I would pay a price of $69.50, I think, to receive the service of the ten-year extension, the privilege of ten years' extension service.
Q. Did the agent tell you that you were purchasing ten volumes and the extension service for $69.50?
A. No; she told me I was getting the books, the ten volumes, as a gift, I understood, and I was to pay $69.50 for the ten-years' extension service.
Mr. MCKEAG. I move that it be stricken out, what she understood. What did she say?
A. As near as I can remember, that was the substance of her statement to me.
Q. To the best of your knowledge and belief she
273 told you that you were to be given those books free?
A. Yes.
Q. And the $69.50 was to be for what?
A. The ten-year extension-service plan.

Q. Did the agent, did Mrs. Thompson tell you that the books were usually in the course of trade given away free in connection with the sale of the ten-year extension service?

Mr. McKeag. I object; that is leading the witness a little too much.

Mr. Winn. I purposely worded that question so that it would not be leading.

Mr. McKeag. I still think it is leading.

Examiner Averill. I think the question is very leading, I must say. I think you had better try first and get the lady to tell us what this representative that she refers to said to her.

By Mr. Winn:

Q. Well, I will withdraw the question. What else, as nearly as you can recall, did the agent say to you?

A. She introduced herself; as I said previously, she had obtained my name as being a woman who was interested in educational work, and she asked me to look over the set of books. I told her I was not especially interested, and she insisted I look through the prospectus she said; and said, after I had examined and thought I was interested in it, that it was a good reference work; and she said that
274 I had been chosen or selected as one of the women to whom she would present this set of books; and she said they did not resort to magazines and papers to advertise, but were doing their advertising through this means; and she also said that they found it was much more satisfactory to get the books in the hands of people who appreciated them and who would recommend them to friends and acquaintances. As near as I can remember, that was the substance of her approach to me.

By Examiner Averill:

Q. What further did she say, if anything?

A. I asked her to explain this ten-year extension system and she said that I would be issued this quarterly, I think it was, this reference bulletin; and I cannot remember that she said anything else about the contract except explaining the books, don't you know. I don't know if I made my understanding of it clear to you or not.

Q. At not time, then, did she say anything to you about money or price or anything of that sort?

A. Yes; surely. As I said previously, she told me the price would be $69.50 for the ten-year extension service. I mentioned that in my previous testimony. I beg your pardon; and that I was to receive complimentary this set of ten volumes.

Mr. Winn. I would like to renew my question. I don't know of any other way of doing it.

By Mr. WINN:

Q. Was anything else said to you about money?

275 A. Except the payment plan. I was supposed—I had the privilege of paying so much down. I think it was $5 down and $9.50 a month, perhaps, until the books were paid for.

Q. Don't answer this question: Did the agent tell you that everybody else paid the same price?

Mr. MCKEAG. I object.

Examiner AVERILL. I think that is permissible. We have attempted to get from the witness what she recalls of it; and if such a thing did take place and she can now recall it, I think she may answer that question. It is leading, I will grant, but I don't know any other way that you can find out whether such a thing was done or was not done. Proceed and answer the question.

(Question read.)

A. I understood from——

Examiner AVERILL. Try to state what was said.

A. I understood her to say very emphatically that this special price was given just to a few selected names she had. I am very positive about that.

Q. She said that this was a special price?

A. That it was—it was not special to me, but that it was special to the few whose names she had.

Q. And you were one of those few?

A. Yes.

Q. Do you recall anything else that was said in that connection?

276 A. No; I don't think I do.

Q. Did you receive the books?

A. Yes.

Q. Have you them now?

A. Yes.

Q. That is the Standard Reference Work that you have?

A. Yes.

Mr. WINN. I have no further questions.

Cross-examination by Mr. MCKEAG:

Q. Do you know whether or not this saleslady was working for Charles E. Knapp and not for the Standard Education Society?

A. She never mentioned the name Knapp; the only name I heard mentioned was Standard Education Society.

Q. And did you pay her by check?

A. Yes.

Q. And to whom did you make out the check?

A. Standard Education Society.

Q. You made all checks payable to them and sent them to them?

A. Yes. I had no further dealings with Miss or Mrs. Thompson.

Q. How did you happen to be a witness here?

A. I was subpoenaed by the Federal Trade Commission.

Q. Did someone interview you at any time?

A. No, sir. I do not know how my name was obtained or anything about it. I was just subpoenaed.

277 Q. Did you ever make any complaint about anything?

A. No, sir.

Q. You were not dissatisfied?

A. No; I was not dissatisfied with the books at all.

(Witness excused.)

Mrs. J. V. EVANS, called as a witness, after being first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you state you name?

A. Mrs. J. V. Evans.

Q. And your address?

A. 530 Seminary Avenue, Hoopeston, Illinois.

Q. And you are here today in response to a subpoena directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. I am.

Q. Did there come a time, Mrs. Evans, when a person purporting to represent Standard Education Society, called on you?

A. There was.

Q. Approximately when was that?

A. June 1928.

Q. Do you recall this person's name?

A. I think it was Mrs. E. C. Thompson.

278 Q. Will you tell us as nearly as you can, please, what Mrs. Thompson's story was at that time?

A. Mrs. Thompson told me, in the first statement she led me to believe that I was getting this set of books——

Mr. MCKEAG. I object to "led me to believe."

The WITNESS. In her conversation at first she told me that this extension time was to go over ten years and this set of books, my impression was——

Q. Not your impression but what she said.

A. She explained that this was for ten years and I was to get the set of books and the ten-year-extension plan. She was only to place six sets in town and I was one of the favored few who was getting this set of books,

Q. Did you sign a contract for the purchase of these books?
A. Yes.
Q. And how much did you agree to pay?
A. $69.50.
Q. The agent told you you were purchasing what?
A. Standard Education Society books.
Q. Did she say anything about the extension service?
A. Yes.
Q. What did she say about that, so far as the purchase was concerned?
A. She said that I would get this extension service.

279 Q. Did this agent tell you, Mrs. Evans, that you were purchasing the work of ten volumes and the extension service for $69.50?

A. This was the price she was only giving six sets; she was only placing six sets in town, and another agent would come later on and ask a higher price for the books.
Q. Did she tell you what that price was?
A. Over a hundred dollars. I think $118, something like that.
Q. And that price was for both the extension service and the books, as you recall?
A. Yes; as I remember.
Q. Did you sign the contract?
A. I did.
Q. And did you pay any money?
A. I did.
Q. Did you pay it by check or cash?
A. Check.
Q. And to whom was the check made payable?
A. Mrs. Thompson.
Q. Did you receive the books?
A. I did.
Q. Have you them now?
A. I have not.
Q. What did you do with them?
A. Sent them back.
Q. Have you paid any additional money?
A. I have not.

280 Q. Have you been, to the best of your knowledge and belief, released from the contract?

A. I prepaid the express.
Q. You signed the contract at the time Mrs. Thompson called?
A. Yes.
Q. At which time you agreed to pay $69.50?
A. Yes.

Q. Have you, to the best of your knowledge and belief, been released from the payment of the balance due under that contract?

A. Not that I know of.

Q. How much money have you paid all together as the result of that contract?

A. $5.50 and express.

Q. Have you had any of that money returned to you by the Standard Education Society?

A. I have not.

Cross-examination by Mr. McKeag:

Q. You say you made the check payable to Mrs. E. C. Thompson?

A. To Thompson; I don't know whether it was Mrs. or Miss.

Q. Did she say who she was representing?

A. She did.

Q. Who?

A. Standard Education Society.

Q. Did she say anything about Charles E. Knapp?

281 A. Not that I remember.

Q. Is it possible she might have said something about him and you not remember?

A. No; I don't think she said anything about him.

Q. When did you return the books?

A. In December.

Q. What was your object in returning the books?

Mr. Winn. I object to that.

Examiner Averill. She can state why she returned the books. Objection overruled.

A. Because she sold, in the first place, more than six sets in the town.

Mr. McKeag. That is all.

Mr. Winn. That is all.

(Witness excused.)

Elsie Christensen, called as a witness, after being first duly sworn, testified as follows:

Direct examination by Mr. Winn:

Q. Will you state your name in full?

A. Elsie Christensen.

Q. Where do you reside?

A. Ashkum, Illinois.

Q. You are here today in response to a subpoena that was directed to you by the Federal Trade Commission in

282 the matter of Standard Education Society?

A. Yes, sir.

Q. Did there come a time when you were called upon by a person purporting to represent the Standard Education Society?

A. Yes.

Q. Approximately when was that?

A. In the month of December 1927.

Q. Do you recall this person's name?

A. There were two of them; I cannot tell you the exact name, but something like Richardson, one man's name; I don't know the other man's name, he introduced me, but I don't remember.

Q. What as near as you can recall was their story?

A. They said they were giving these books to fifteen people in the county and giving the books from the Standard Education Society free as an advertisement, and we were paying for the extension service, which went over a period of ten years.

Q. And what was the price of the extension service?

A. $69.50.

Q. What is your occupation?

A. Teaching.

Q. In the public schools of Illinois?

A. Yes.

Q. What else, if anything, can you recall as to what these persons said to you?

283 A. They were giving them as a special advertising proposition. It was a much better way than advertising through magazines or newspapers because, if they got satisfied customers, they would advertise the book to their friends and it would be a far better way of advertising.

Q. Was anything said by the agents with regard to the price which other persons were required to pay for this same work?

A. No, sir; he said nothing more about it.

Q. Did you sign a contract for the books?

A. I did.

Q. And did the agent tell you how many persons in the county were being sold this set of books for $69.50?

A. No; but they were selling fifteen of this extension service for the ten years and the books were free for the $69.50; they said nothing else.

Q. To fifteen people in the county?

A. To fifteen people in the county.

Q. Did he say anything as to the sixteenth person?

A. No.

Q. He purported to be the sales agent of the company?

A. Yes.

Q. Did you sign a contract for the books?

A. I did. I received no copy of it, but I signed something.
Q. Did you receive the books?
A. Yes.
284 Q. Have you them now?
A. No.
Q. What did you do with them?
A. Returned them immediately.
Q. Did you do anything at the time you signed the contract?
A. I paid $9.50 by check, but refused to pay it afterward, so that really they have no money of mine.
Q. To whom was the check made payable, if you can recall?
A. I am not sure, but I think the Standard Education Society.
Q. Did you refuse to pay the check?
A. I told the people at the bank I did not wish the books and was going to return them and that I wished they would not honor the check.
Q. In other words, you stopped payment on the check?
A. Yes.
Q. Have you been released, so far as you know, from the contract you signed?
A. I never heard any more about it.
Q. Was anything said to you by the agent with regard to the newsness or lateness of the ten volumes which were to be given to you free?
A. I don't know how to answer it. He did not give any date specially, but said they were quite late and that they would be very up-to-date with the extension service. I cannot say for sure.
285 Cross-examination by Mr. McKeag:
Q. What was your object in returning the books?
A. I did not care for them in the first place; I really did not want them.
Q. When did you leave Ashkum, Illinois?
A. Seven o'clock.
Q. When?
A. Last night?
Q. Why didn't you come up this morning?
A. There were no train connections this morning.
(Witness excused.)
Examiner Averill. We will now adjourn until tomorrow morning at 10:30 o'clock.
(Whereupon, at 12:40 o'clock p. m., an adjournment was had until Tuesday, May 21, 1929, at 10:30 o'clock a. m.)

286 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

CHICAGO, ILLINOIS, *Tuesday, May 21, 1929.*

Met, pursuant to adjournment, at 10:30 o'clock a. m.

Before E. M. AVERILL, examiner.

Appearances: Robert H. Winn (Washington, D. C.) for the Federal Trade Commission. James McKeag for the respondents.

287 PROCEEDINGS

GRACE NIXON, called as a witness, having been first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you give your name in full?

A. Grace Nixon.

Q. And your address?

A. 301 State House, Indianapolis, Indiana, State library.

Q. And you are here in response to a subpena directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. I am.

Q. When did you leave Indianapolis?

A. Five o'clock yesterday evening.

Q. And you expect to return this evening?

A. I expect to return tonight; yes.

Q. What is your occupation?

A. I am secretary to Mr. Louis J. Bailey, State librarian of Indiana.

Q. Now, how long has Mr. Bailey been State librarian?

A. Since August 1926.

Q. And who preceded Mr. Bailey?

A. Mr. Marcus C. Brown.

Q. He is now living?

288 A. No; he died in August 1926.

Q. And did you occupy any official capacity during Mr. Brown's tenure of office?

A. I was Mr. Brown's private secretary.

Q. And how long were you Mr. Brown's private secretary, or since when?

A. From 1910—September 1910 to August 1926.

Q. The time he died?

A. Yes.

Q. Is there or has there ever been in the Indiana State library, on the shelves of the Indiana State library, the Standard Reference Work?

A. No.

Q. You know that to be a fact of your own knowledge?

A. I do.

Q. What do your duties as secretary involve generally, Miss Nixon?

A. I have charge of all the private correspondence of the librarian and the business correspondence connected with the library and general office work.

Q. Did you ever, during either Mr. Brown's tenure or Mr. Bailey's tenure, write at their request or dictation or recommendation for the Standard Reference Work?

A. I did not.

Q. Is there in the files of the Indiana State library
289 a copy of any recommendation written by Mr. Brown?

A. It is my belief there is not.

Q. Did you write for Mr. Brown all of the official correspondence of which he was the author?

A. Everything except I might be away on a vacation and someone might write for me.

Q. Was there in the State library of Indiana at any time, not necessarily for the library, a copy of the Standard Reference Work?

A. Yes.

Q. Will you tell us about that if you can?

A. A salesman for the company called and left a set with Mr. Brown for his examination. It was to be examined and returned if Mr. Brown did not care to keep it.

Q. Did Mr. Brown examine it?

A. He did.

Q. And what did he do with the work?

A. He decided he did not want it and returned it.

Q. Were there any complications arising out of that incident?

A. Yes; Mr. Brown received a letter from the company insisting that he bought the set and demanding the money. Mr. Brown answered that he had a distinct understanding with the salesman that it was to be returned if he did not care to keep it.

Q. You wrote that letter at his dictation?

A. I wrote that letter.

290 Q. And it was sent?

A. Yes.

Q. Is any copy of that letter that might have been made at that time in existence or available now?

A. It is very doubtful on account of the crowded conditions. Most of our correspondence is either stored away in inaccessible places or has been destroyed because of lack of room.

Q. Do you know whether or not Mr. Brown had ever signed a contract for the purchase of the Standard Reference Work?

A. It is my firm belief that he did not, because he never recommended any works for publishers. It was his policy not to do it. It was his very strict policy not to do that.

Cross-examination by Mr. McKeag:

Q. About when was it that this salesman left this set there?

A. I think it was in the fall of 1922 or the early part of 1923.

Q. And that was left with him at Indianapolis?

A. Yes.

Q. And when were you on your vacation during that time?

A. I cannot say; I don't remember.

Q. Did you usually get your vacation in the summer time or in the fall?

A. Sometimes in the spring, sometimes in the summer, and sometimes in the fall; usually in October; but I can-
291 not say I did that year because I do not know.

Q. And you are testifying here from your recollection and from your impression gained at that time?

A. Yes.

Q. You know Mr. Brown's handwriting, I take it?

A. Yes.

Q. Have you any samples of his signature or handwriting with you?

A. I have not any with me.

Q. And what encyclopedias or reference works do you have in your library?

A. I could not say. We have dozens of encyclopedias and reference works, standard works.

Q. What do you mean by "standard"?

A. Recognized standard works.

Q. Name some.

A. The Encyclopedia Britannica, the New International, and various technical ones, medical ones.

Q. Dealing with particular fields?

A. Yes.

Mr. McKeag. I will ask to have this marked "Respondent's Exhibit 1" for identification.

Q. Miss Nixon, I show you a letter marked "Respondent's Exhibit 1" for identification on the letterhead of the Indiana State library and will ask you whether that is Mr. Brown's handwriting?

292 A. It looks like Mr. Brown's writing, but I could not swear it is Mr. Brown's writing.

Q. I thought you said you knew Mr. Brown's writing.

A. I don't think after all these years that I could swear that that is Mr. Brown's handwriting.

Q. You could not swear it was not his writing?

A. No.

Q. How about the body of the letter?

A. It looks like Mr. Brown's writing.

Q. Would you say from your examination of the letter that it was Mr. Brown's writing?

A. No; I would not.

Q. Would you say it was not his writing?

A. No; I would not.

Q. How can we find out whether or not that is his writing?

A. I don't know.

Q. Do you know anybody more competent to judge his writing than yourself?

A. I don't know, unless it would be Mrs. Brown.

Q. The letter is dated about the time you say the books were there?

A. Well, all I can say is it looks like Mr. Brown's writing. I would not swear it is; swearing to something I do not know.

Q. It would be your best judgment that it probably was his writing?

293 A. No; I would not say that. I say it looks like Mr. Brown's writing.

Q. That is the standard official letterhead used at that particular time at the State library?

A. Yes.

Redirect examination by Mr. WINN:

Q. You stated in cross-examination that your testimony was based upon your recollection, as I recall it, of things that went on at that time. Is it based upon anything else? Have you examined the files at any time in search for a copy of a letter of recommendation which Mr. Brown is purported to have made for the Standard Education Society?

A. I have not. I did not before I came up here because, as I said, our correspondence, if still in existence, is stored away in a crowded basement.

Q. Have you ever at any time since 1922 examined the files for the purpose of trying to locate a copy of any letter of recommendation made?

A. Yes.

Q. When did you examine the files?

A. Some time—well, I cannot tell you the date; some time after they threatened to sue Mr. Brown for this money, and

I tried at that time to find a recommendation he might have made, or a copy of it, and he tried and he had no recol-
294 lection of having made any recommendation.

Mr. McKEAG. I move to strike that out.

Mr. WINN. Yes; strike that out.

By Mr. WINN:

Q. When you say that that was—would you say that that was approximately one year or two years or three years or four years or less than a year or more than four years after?

A. I would say it was less than a year.

Q. Were you able at that time to locate a copy of any recommendation which Mr. Brown had made?

A. I was not.

Recross-examination by Mr. McKEAG:

Q. If this is in handwriting, being written by hand, there would not necessarily be a copy?

A. No.

(Witness excused.)

BERT McBRIDE, called as a witness, after being first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you state your name?

A. Bert McBride.

Q. Where do you reside?

A. Indianapolis, Indiana.

295 Q. What is your occupation?

A. President of the Bankers Investment Company.

Q. And what is the Bankers Investment Company?

A. Dealers in investment securities.

Q. Did there come a time when you were called upon by a person purporting to represent the Standard Education Society of Chicago?

A. Yes.

Q. And approximately when was that?

A. Can I refer to something to get the exact date?

Q. Yes; if you wish to refresh your memory.

A. It was either the third or the fourth day of April 1929.

Q. And do you recall the name of the person who called on you in that capacity?

A. I think Mr. Swor.

Q. And what, as nearly as you can recall, Mr. McBride, was Mr. Swor's story?

A. Mr. Swor came into my private office and introduced himself and said he was the son of Mr. Swor, the colored comedian, and he opened up a discussion about that, dis-

cussed the matter and stated that in connection with that his wife was playing at the Indiana Theatre, that is one of our local picture houses, and we discussed matters in reference to his father at some length.

Then he made known his business, which was repre-
296 senting this educational society and I believe they styled themselves as furnishing a very complete financial information——

Q. And what was the nature of this financial information which they were furnishing?

A. In brief—he went into it in some detail—but in brief the financial service he was purporting to sell was of a rather unusual character as to the extent of the service they could render, and among other things—one of the first statements he made was that the company was going to open an office in Indianapolis, of which he would be in charge, and that would be done within the next ninety days, and that would be helpful, and the source of service they would render, one of the particular items he dwelt on, if we wanted any information on any corporation or individual it would be forthcoming, as they were prepared to make personal investigation and give us personal reports on the matter inquired about.

Q. Did Mr. Swor make any other representations as to this service?

A. As I recall it, they had eighteen of the best financial writers of the country—I cannot name them now—and they had the services of others, and that was about, in brief, the situation. I was in a hurry to get away, and he then gave me the price, which was very nominal.

Q. Do you recall what the price was?

A. On the ten-year basis it was $89, and payable so
297 much a year, whatever the proportion of that is, and I told them all right, I would take the service. Then he said, "Well, now, if you want to pay that all cash, there is 10 percent discount", and I said all right to that, and I gave him a check. That was about between two and three o'clock in the afternoon, and I got up then to leave and I called my private secretary, Mrs. Wilson, and he commenced to lay out pictures of his father and pictures of his wife and himself in different places, and he had letters scattered all around there that he had from governors and different people throughout the United States. I did not read them, but you could see the headlines of them, and so he got the girl interested, and just before I left he drew out a sample of the coverings of a set of books about that long, I would say, and said, "I am going to give you this", and he named

two or three different kinds to give me my choice, and I said, "I don't know a thing about it." I did not even look at them, the names of them, and I could not tell you now what they were. He laid that down, and then he pulled another one out and said that was another set of books, and "I am going to give you this." I did not look at them. It was a nice cover; I would say that there were two dozen in the pack, but I am not sure of that, and he made a remark and he said, "This is not all I am giving out", and he pulled out one of another color, and I said to him, "I am not going to have any time to read them", and he said, "Well, you have somebody that will", and I said, "Well, I
298 don't know if I have or not." He said, "The Missus will read them. Where do you live?" I gave him my home address and then I left him and my private secretary looking at his father's pictures and the different things there. He had a whole lot of stuff out there. Then I got thinking the thing over, and I decided that this fellow's representations were all out of line, and I wrote a letter immediately—that was the first thing the next morning before the bank opened up—I wrote a letter to the bank, which is just downstairs in my building, and stopped payment on the check, and when we went down to stop the check we found it was certified yesterday afternoon before closing time.

Then I took the matter——

Q. To whom was the check made payable?

A. The check was made payable to this Education Society, $89 less 10 percent, as I recall the figure.

Then I wired the Education Society——

Q. Before you go into that let me ask you a couple of questions. Was this service which was to be furnished to you compared with any other service in general circulation by Mr. Swor?

A. Yes; but I could not give you the exact ones, except that he did state, and his statement was unusual to me, of what would be furnished and the reason for that was they would open an office there in ninety days and they wanted a few subscribers at this price and the only one he mentioned
299 to me that he already had was Chester Jewett & Company, who are also dealers in investments and securities, one of our leading houses in Indianapolis.

Q. You said something about this special price. What do you mean by that?

A. I took it from what he said——

Mr. McKeag. Wait a minute.

By Mr. WINN:

Q. Tell us what he said.

A. What he said was, he was giving this special price to a few people—how many I don't know—to get the thing started, and get it a going.

Q. You said that you sent a telegram to the company?

A. Yes.

Q. I hand you a paper; can you tell me what it is?

A. Yes; that is the telegram I sent.

Q. That is a carbon copy of the telegram you sent?

A. A carbon copy.

Q. The telegram was sent?

A. It was.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 71."

Examiner AVERILL. The paper in question will be marked "Commission's Exhibit 71" and received in evidence.

(Said paper was received in evidence and marked "Commission's Exhibit 71.")

300 By Mr. WINN:

Q. I hand you another paper, and will you please tell me what that is, sir?

A. That is a copy of a letter I wrote to the Education Society.

Q. On what date?

A. April 5, 1929.

Q. The same date you sent the telegram?

A. Yes.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 72."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 72."

(Said paper was admitted in evidence and marked "Commission's Exhibit 72.")

By Mr. WINN:

Q. I hand you another letter and will ask you if you can tell me what that is?

A. That is a copy of a letter I wrote the Standard Education Society on April 9, 1929.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 73."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 73."

(Said paper was received in evidence and marked "Commission's Exhibit 73.")

301 By Mr. WINN:

Q. Did you receive any response to the telegram which has been introduced and marked "Commission's Exhibit 71", or to the letter of April 5th which has been introduced and marked "Commission's Exhibit 72"?

A. I did not.

Q. Do you recall whether or not you received any answer to the letter which has been introduced in evidence, dated April 9, marked "Commission's Exhibit 73"?

A. No, sir.

Q. I hand you another paper; will you tell me what that is, sir?

A. That is a letter I received from Standard Education Society under date of May 10th.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 74."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 74."

(Said paper was received in evidence and marked "Commission's Exhibit 74.")

By Mr. WINN:

Q. I hand you another paper. Can you tell me what that is, sir?

A. That is a copy of my letter in answer to the letter of May 10th from Standard Education Society.

Q. And the letter of May 10th is the letter just intro-
302 duced in evidence, marked "Commission's Exhibit 74"?

A. Correct.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 75."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 75."

(The said paper was received in evidence and marked "Commission's Exhibit 75.")

By Mr. WINN:

Q. I hand you another paper. Will you tell me what that is?

A. That is a letter dated May 13th, received from the Standard Education Society.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 76."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 76."

(Said paper was received in evidence and marked "Commission's Exhibit No. 76.")

By Mr. WINN:

Q. Mr. McBride, there is some mention in the letter just introduced as exhibit 76 of a Standard Quarterly Review which, according to the letter, you were to pay $4.50 for one year's subscription. Do you know anything about what that is?

A. No; I do not.

Q. To the best of your recollection, did you reply
303 to that letter, Mr. McBride?

A. I think the only reply I made to this letter was a copy of my letter to the express agent at Indianapolis, declining to accept the books that they had attempted to have delivered at my residence.

Q. I hand you another letter, Mr. McBride, and will you tell me what that is?

A. That is a letter I received from the Standard Education Society, dated May 16, 1929.

Q. And is it in response to a letter of yours?

A. Yes.

Q. Of what date?

A. May 15th.

Q. Is that the same letter which has been introduced in evidence here and marked "Commission's Exhibit 75?"

A. Yes.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 77."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 77."

(The said paper was received in evidence and marked "Commission's Exhibit 77.")

By Mr. WINN:

Q. Did you sign a contract, Mr. McBride, for the purchase of the service?

304 A. Yes.

Q. Was anything said about any books prior to the signing of the contract?

A. No, sir.

Q. Did you contract to purchase any books?

A. I did not at the time I signed the contract. I did not know they were to be furnished until afterwards. He told me then that he was going to give me a set of books which turned out to be three sets of books.

Q. I hand you a piece of paper, Mr. McBride, and can you tell me what that is?

A. That is a copy of the contract that I signed.

Q. Where did you get the copy of that contract?

A. He left this with me stating that the company would sign a contract and mail it to me from Chicago, which I never received.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 78."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 78."

(Said paper was received in evidence and marked "Commission's Exhibit 78.")

By Mr. WINN:

Q. Was the extension service which you purchased ever sent to you?

A. No, sir.

305 Q. Were the books which were to be given to you ever sent to you?

A. There were some books received there, but what they were, I don't know, because I declined to accept them.

Q. The books which were received; do you have them now?

A. No, sir; I never accepted them.

Q. Was the $80.10 which you paid to the salesman the full payment on your contract?

A. Yes.

Q. Have you ever received that or any part of it back from Standard Education Society?

A. No, sir.

Cross-examination by Mr. McKEAG:

Q. You say you are in the investment banking business?

A. Yes.

Q. And what does that consist of, making loans on all kinds of building and getting bond issues and reselling them?

A. Not all kinds of buildings. That is the nature of the business. We create some securities and we buy and sell securities.

Q. And this agent, Mr. Swor, as I understand it, told you that this service which would be rendered was a financial service?

A. Yes.

Q. So that you could get financial ratings or information upon persons that you might have occasion to deal with?

A. Any corporation that we made inquiry about.

306 Q. And did you read over this contract that you signed before you signed it?

A. I would not say whether I read it in full or not. I took his word for most of it.

Q. And when he presented the contract for you to sign on the dotted line, you simply signed it; is that the idea?

A. Not exactly that, but probably that would be a portion of it, because I was relying on his statement for what I was going to get; I did not know.

Q. And if you were going to get the service which he represented to you, this price was a very moderate price for this service?

A. I considered it so; yes.

Q. And wasn't it rather unusual for a concern giving financial service to be interested in selling books along with it? Would not that put you on your guard right away?

A. Not at the moment; no, sir.

Q. Now, when you think about it, it would?

A. Afterwards it did; yes.

Q. And if you had not been carried away by his great persistence you would probably have thought of it at that particular time?

A. Not his persistence, but his statement.

Q. Did you say he was a colored man?

A. No, sir.

Q. A colored comedian?

A. No, sir.

307 Q. You mean a blackface comedian?

A. Blackface comedian, known the Nation over, nearly. My statement as to his being a colored comedian I guess I will admit that I am wrong; it would be a blackface comedian.

Q. The copy of the contract that he left with you stated specifically what you were to get?

A. There is only one thing I recall that was specific, and that is the senior Chester Jewell consultation privileges. I asked what that meant, and he said that was the financial service that we were to get. I paid no attention to the books or anything other than the financial end of it because we were not interested in anything but that. I remember calling his attention and asking him on that particular service proposition, and that is the statement he made.

Q. When it referred to Standard Reference Work, you assumed that that was the bound volume with the financial rating?

A. No; I assumed that would come to us in reports from time to time at regular intervals.

Q. Financial reports?

A. Financial reports; yes; statistical reports.

Mr. McKeag. I ask o have this paper marked "Respondents' Exhibit 2" for identification.

By Mr. McKeag:

Q. I show you a paper marked "Respondents' Exhibit 2" for identification in this case and will ask you if that

308 is, if that signature, Bankers Investment Company, is in your handwriting?

A. Yes.

Q. "B. McBride"; is that in your handwriting?

A. No; I don't think so. I don't remember that being on there, but the "McBride" is a little like my own handwriting. I don't think that was on there when I signed it, but this is my signature.

Q. Bankers Investment Company?

A. Yes; and this is not my writing.

Q. 2012 North Delaware Street?

A. No; that is not my writing, although the "McBride" looks a little like my handwriting, but the other is not.

Q. Calling your attention to some writing in the left-hand corner—is that in your handwriting?

A. Yes; that is my handwriting.

Q. "To be approved by Harry Wheeler, Bert McBride"?

A. Yes. The reason for that, if I may state on that proposition, I knew Harry Wheeler very well, and he stated that all of the collections, etc., were handled through Harry Wheeler's bank. After he told me Harry Wheeler was in California, that is the first I knew he was down there, and I told him I would be willing to accept and pay for anything that Harry Wheeler would O. K., and that is the reason that I put that on there.

Q. If the Standard Education Society located at Chicago sent the books called for upon this written order, you
309 would think that they were justified in living up to their contract, would you not?

A. Well, frankly, I got suspicious of the thing because they would not reply to my letter. I got no reply from them until after the books were delivered, and that is why I refused to pay for them.

Q. Well, the contract there speaks for itself in plain English language, does it not; there is no ambiguity in it of any kind, is there?

A. I am just expressing my opinion.

Q. Well, that is true, is it not?

A. I don't think it is true; no; that is my personal opinion about it.

Q. Have you ever had any agents in your employ that told something to your customers, something wrong, made misrepresentations about a bond issue or something?

A. If I ever did, I got right after it immediately to rectify it, and I did not postpone it.

Q. You have had that occur?

A. I probably have.

Q. And where you are dealing with a lot of salesmen that is bound to occur once in awhile?

A. We do not deal with a lot of salesmen. We have a few salesmen, but not many.

Q. But even with a few, a certain percentage of
310 them in course of time are not particular about what representations they make in order to get a sale; is that right?

A. Well, that is minimized in our concern.

Q. From an examination of the order signed by you, there is not anything there about establishing local office or service to be rendered, is there?

Mr. WINN. I object to the question. The contract speaks for itself.

By Mr. McKEAG:

Q. There is not anything in there from which you could have any reliance as to any of those statements made by him?

A. I took it that the one reference made there is the one that I thought had a bearing on the whole situation.

Q. The ten-year research bureau consultation privilege?

A. That is the one that I thought was covering the service that I thought that I was getting. The ten-year research bureau consultation privilege and the ten-year revision service.

By Examiner AVERILL:

Q. The one opposite which is printed $89?

A. Yes.

By Mr. McKEAG:

Q. And you believed that that would entitle you to financial reports from various concerns without limit as to number during the period of ten years; is that right?

A. I don't recall that there was any limit to it. I
311 would not assume to abuse it, but I don't recall any limit.

Q. But that is what appealed to you at that particular time—that for the next ten years you would have financial reports upon anyone you wanted to without any additional expense; is that right?

A. Yes; together with the regular service that was supposed to be forthcoming.

Q. As a matter of fact, when you get a financial report, you usually pay $1.50 for it, for each one, do you not?

A. That would depend. Bradstreet and Dun we subscribe for by the year, and we very seldom have any extra charges on that

Q. You pay them a yearly fee of $75, is it?

A. I think it is $75 or $100, or something like that.

Q. And that entitles you to so many reports; and if you have any in excess, you pay for each report?

A. They have a rule on that, but what it is I could not say.

Q. You thought that this service which was to be rendered here was comparable with Dun and Bradstreet?

A. Yes; and it was so expressed by my secretary, too, in the very terms you state there, a better service than Bradstreet.

Q. Would not that in itself convince you that it was impossible to render such service at that price?

A. No, sir.

312 Redirect examination by Mr. WINN:

Q. You said in response to a question put to you by Mr. McKeag, in cross-examination, that you were not made suspicious by the offer of books right away. When was the question of books first brought to your attention?

A. Just the last thing, after the contract had been signed and I was ready to leave the office.

Q. And when did you write the letter to the bank stopping the check?

A. The next morning before nine o'clock.

Q. And when did it come to you that possibly everything was not as it should be, as near as you can recall?

A. I got to thinking of it after I got to bed that night and I mentioned it to my private secretary the next morning and she agreed with me and then I dictated the letter.

Q. The fact that the financial service included the gift of a reference work of three volumes of fiction, did that have anything to do with your deciding that everything possibly was not as it should be?

Mr. MCKEAG. Thirty volumes, you mean, instead of three.

Mr. WINN. Yes; three sets.

By Mr. WINN:

Q. The fact that three sets of fiction and one set of reference work were given, did that have anything to do with that?

313 A. Yes.

Q. But nothing was said at your office when Mr. Swor was there regarding this until the finance-service matter had been closed?

A. That is true.

Q. You mentioned something in cross-examination regarding the Standard Reference Work in response to a question from Mr. McKeag. What do you mean by the Standard Reference Work?

A. I was trying to get the name of this company. I got in my mind the word at the beginning in there, something that I was mistaken on that. I was trying to arrive at the correct name of this company.

Q. Were you referring to the Standard Reference Work and the ten-year extension service?

A. That was supposed to be the ten-year financial service.

Q. Did you know at the time anything about the Standard Reference Work itself?

A. Never heard of the company before.

Q. Prior to the time you signed that contract, did you know anything about or had you heard anything about the Standard Reference Work, the ten volumes represented by that line across the top, the first service that is mentioned? Were you referring to that?

A. No, sir.

Q. Or to the extension service?

A. My reference was to the financial service.

314 Q. And anything you said with regard to representations made by Mr. Swor to you prior to the time you signed the contract had to do with the extension service and research rather than the bound volumes represented by the other four sets? Anything you said referred to these things prior to the time you signed the contract?

A. To make myself clear on that, the ten reference and research works that you refer to, I call that financial service. These books were to be a so-called "gift" and I thought that that was the bonus and that they were thrown in to get the thing over, and he got the thing over without it and was going to give it to me to get the thing going. He told me that he had sold one concern over there, Jewett & Company.

Q. Did you understand that this service was to be in the nature of the same kind of service as Dun and Bradstreet in that you would get reports upon specific companies at any time you would write for them, or that the ten-year extension service which you were to receive automatically was a general report covering some statistical matters covering various industries and industrials, or did you understand it was to be both?

A. It was to cover the regular reports, the general situation, business conditions, etc., and financial reports, and, in addition to that, we would get any special information we wanted by making the inquiry. I don't remember whether he put any limit on the number we were entitled to.

315 Our number would not be so great anyway.

Q. It was to be a cross between the Wall Street Journal and Dun and Bradstreet's reports?

A. Yes.

(Witness excused.)

ALBERT R. BRUNKER, called as a witness, after being duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you state your name?
A. Albert R. Brunker.
Q. Where do you reside?
A. Chicago.
Q. Did there come a time when a person purporting to represent the Standard Education Society of Chicago called upon you?
A. There did.
Q. Approximately when was that?
A. I have not the date exactly in mind; these things happen with great frequency. The best way I can locate that would be that I immediately called up Dr. Goode at that time so that his testimony as to the time I got in touch with him would prove that.
Q. I hand you his to refresh your recollection. Can you tell me approximately when it was?
A. It was the same day that I wrote him. That
316 refreshes my memory.
Q. When was it this person called on you?
A. It was either that day or the day before.
Q. What day is that?
A. That was June 6, 1926.
Q. It was early in June?
A. June 6th.
Q. Early in June in the year 1926?
A. Either that day or the day before, because I immediately wrote to Dr. Goode about it.
Q. Do you recall the name of the man who called on you?
A. I do not; I have not the faintest recollection.
Q. Can you tell us what his story was?
A. The story was the same as innumerable others, particularly this terrible epidemic of American Legion War Histories and things of that kind that we have been beset with for years and on which you take a natural leaning towards everybody because you want to help the poor kids that went through their war experience, and my impression of that is that it has been done to death in recent years.

The story was that they wanted to give me this set of books that was worth this amount of money.

Q. Approximately how much?
A. I mentioned it in there—what was it—$125. If I would write a letter, which a number of other prominent
317 people were supposed to be doing, which would be used in their tactful way—I apologize for using the term

"prominent" in connection with myself—that it would give a dignity in the community and a certain prestige that would result in the increased sale of the thing to other people.

Q. Was anything said to you about your purchasing anything?

A. No; my recollection is—there are so many forms of these things you have to refresh your memory on them, but based on this letter, which makes it very clear, I was to be given this $125 set of books for the use of my name as the name of Dr. Goode, and other names were being used on their printed form which they showed me.

Q. Nothing was said about purchasing anything, so far as you can recall?

A. There was not; not to my recollection.

Q. Did the agent have with him what purported to be the recommendations of other persons?

A. Yes; he had quite a list and when I read over it, I happened the names of several people I knew on the list, and among others that of Goode, whom I had had some very recent contact with in connection with the University of Pennsylvania matters and other things of that kind, and who I knew to be connected with the University of Chicago, and his name being connected with that would have a great deal of weight in any consideration I might have given it
318 for myself. I happened to be trustee of the University of Pennsylvania and knew Dr. Goode quite intimately and had had some recent connection with him, and out of the list of names I picked his name out to check on the thing.

Q. You say that this agent had some papers which purported to be recommendations?

A. A printed list, as I remember it.

Q. I hand you this paper, marked "Commission's Exhibit 18", and I will ask you to look at the back of it and say whether or not there is on there the recommendation which you referred to?

A. Yes; to the best of my recollection, that is the form in which it was presented to me. I seem to remember it was something more than just the printing of his name; it contained some expression that was favorable about it.

Q. I hand you another paper, marked "Commission's Exhibit 56a", and will ask you to tell me whether or not you saw that at the same time?

A. It is too long ago and I am too hazy on it to say anything to that effect.

Q. I hand you another paper, marked "Commission's Exhibit 62" for identification; will you tell me what that is?

A. That is a letter from me to Dr. Goode, written either the day of my conversation with the agent or the day following, asking if the facts as represented by the agent in connection with Dr. Goode were authorized by him and authentic.

Mr. WINN. I offer this in evidence and ask that it be
319 marked "Commission's Exhibit 62."

Mr. MCKEAG. I object to it, because it is entirely immaterial correspondence between outsiders, nothing to do with this respondent in any way, shape, or manner.

Examiner AVERILL. I must sustain the objection.

Mr. WINN. I only wanted it in for the purpose of clarifying the record a little bit.

By Mr. WINN:

Q. Did you accept the free offer?

A. I did not.

Q. And, of course, the books were never sent to you?

A. No.

Mr. MCKEAG. I have no questions.

Mr. WINN. That is all I have, and, as far as I am concerned, we can adjourn to Minneapolis, Minnesota, at 10:00 o'clock May 24th.

Examiner AVERILL. You make the motion that we now adjourn to Minneapolis?

The hearing in Chicago is now concluded and is adjourned, to reconvene on Friday, May 24th, at 10:00 a. m., in room 303, United States Post Office Building, Minneapolis, Minnesota.

(Whereupon, at 12:30 p. m., the further hearing was adjourned to room 303, U. S. Post Office Building, Minneapolis, Minn., Friday, May 24, at 10:00 a. m.)

320 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

MINNEAPOLIS, MINN., *May 24th, 1929.*

Met pursuant to adjournment, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: R. H. Winn, attorney for the Commission, Washington, D. C. Attorneys for respondents advised they would not be present at this hearing.

321 Examiner AVERILL. Are you ready, Mr. Winn?

Mr. WINN. Yes; we are ready, if Your Honor please.

ALICE STERLING was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your name?

A. Alice Sterling.

Q. You reside where, Miss Sterling?

A. Red Wing, Minnesota.

Q. In the State of Minnesota?

A. Yes, sir.

Q. And you are here today in response to a subpoena directed to you by the Federal Trade Commission in the matter of Standard Education Society?

A. Yes; I am.

Q. What was your occupation in Red Wing in 1924?

A. Well, I was acting secretary of the Y. W. C. A.

Q. Did there come a time, Miss Sterling, when a person purporting to represent the Standard Education Society, of Chicago, called on you?

A. Yes, sir.

Q. Approximately when was that?

A. I imagine—whether it was four years this spring
322 or five—I imagine it was four years ago, along in April.

Q. I now hand you a letter which may refresh your memory.

(Witness handed paper by counsel:)

A. Well, then, that would be just five years ago.

The EXAMINER. Well, if that paper refreshes your recollection, just state the approximate date that the party called on you.

The WITNESS. Well, that must have been perhaps in December 1924.

Q. I hand you that paper again; and see if that will refresh your recollection again. What year would you say it probably was in?

A. Well, it was in 1923, if I wrote these letters in 1924.

Q. Then you say it was probably the latter part of 1923?

A. Yes.

Q. And had anything occurred prior to the visit of this agent which you can tie up with his visit?

A. Well, it would be just the receiving of this postal card, and that was addressed not to me. It was addressed to the Y. W. C. A., and, of course, I was acting as secretary, and it was on this free offer of a set of books. It was from the Standard Education Society, and it was really offered to the Y. W. C. A., and I was the representative of the Y. W. C. A., so I sent the card back to them, and they said that their agent would call on me in a few weeks' time.

323 Q. This communication that you received you say was a card?

A. Yes; it was a card.

Q. Do you have the card which you received from them?

A. No; because I sent that back to them.

Q. And do you recall by whom the card purported to be signed, or from whom the offer came?

A. Well, I know it was the Standard Education Society, and whether there was any other signature I can't say. I doubt it though.

Q. And as the result of sending this card back, did you receive a call?

A. Yes; a gentleman called.

Q. And what, as nearly as you can recall at this time, was his story?

A. Well, he said, somewhat as the card said, that he was not selling; he was not their salesman; he was just sort of preparing the way; that in a short time there would be several salesmen to canvass the town, and that there were just two or three—I was one of them—a couple of others—he gave one name—who were to get this set of books absolutely free, just as the postal card had said, and it was this Standard Reference Work, and he went into detail in regard to the Work, so I just thought that as a representative of the Y. W. C. A.—they were pretty hard up anyway—that if I got anything like that, as fine as that, it was up to me
324 to take it, and after I had really decided to take the think he spoke of the—that was a gift, and he spoke of this Reference Work, and then he spoke of the money involved, I think $3.50 a month, and $5.50 advance fee, and I said I could hard tie the Y. W. C. A. up for that at least without calling in the board members. Then we got to talking it over, and I thought that if the Y. W. C. A. would get that, as a gift, I decided to take the other, and I paid him the $5.50, and that evening it all just kind of came over me, what the idea was, and I called him up at his hotel that night, and I said I didn't think I was equal to it, and so he said that I could not go back on it because he had already sent in the order, and so I sat down that evening and wrote a letter to the company and just told them what the circumstances were and that I would be glad to forfeit the $5.50, and not to send on the books. There was no correspondence for a long time, and they sent on the books and the express company notified me, and I paid the express, which, of course, they would have paid if I had accepted them, and then the express company returned them, and I don't think they sent the books a second time, and then I didn't hear—then the loose leaf began coming and coming, and I paid

the express back each time. They sent those several times, and finally I wrote them, and I wanted the express company not to express them, and so the thing sort of ended so
325 far as I was concerned, and then I began to get their threatening letters, so I turned the matter over to the chamber of commerce and then told me to wash my hands of it, and they put it in the Advertising Club there, in the hands of the Advertising Club in Red Wing, and they sent it on to New York, and I thought I was through until I kept receiving the letters. They were always putting the claim in the hands of a collection agency, and last summer was the last letter I got. I just wrote them a courteous letter, and then it just seemed to have ended.

Q. You said a few moments ago something about the price of the Reference Work—the $3.50 a month and the $5.50 that you were to pay down for the Reference Work. Were you exactly clear on that statement?

A. Well——

Q. Do you mean to tell us that you were to pay for the Reference Work $5.50 down and $3.50 a month?

A. Well, it seemed to me—he put it as this, "We are just giving you this. This really is a gift." He kind of obligated me. It was like he said, "If we are doing this—it seems to me that we are giving this to the Y. W. C. A., and even if the Y. W. C. A. can't use the loose-leaf, you could use that", and I did that so as to get that free as a gift to the Y. W. C. A. I felt under obligation, and I signed up really for the loose-leaf, and the Y. W. C. A. were to get the set of books, and I was really to get the loose-leaf.

326 Q. Well, what were you to pay for, the books or the loose-leaf?

A. Well, I think I was to pay for the loose-leaf.

Q. Then, when you said, "The Reference Work", you meant the loose-leaf?

A. Yes.

Q. And the books were coming to the Y. W. C. A.?

A. Yes; they were really to come to the Y. W. C. A.

Q. As what?

A. As a gift.

Q. You said that when the books came to you, to the express office, the express company sent them back. Why did they do that?

A. Because I asked them to. I would not accept them.

Q. Did the agent say anything to you, Miss Sterling, regarding the modernness of the Work—as to how long it had been off the press?

A. Yes; he dwelled on that quite extensively, that they were just off the press. You might have though they were

hardly off—that they were just—well, they really were just the newest thing on the market, and this loose-leaf was to keep you up-to-date all the time, and no other company had that loose-leaf service.

Q. I hand you a piece of paper. Will you tell me what it is? Not what is on it, but just who it is to, and the date?

A. It is a letter I wrote to the Standard Education
327 Society September 8th, 1924.

Q. And is that an original duplicate which was in the machine, in the typewriter at the same time as the original?

A. Yes, sir.

Q. And did you send the original?

A. Yes, sir.

Mr. WINN. I offer this in evidence, and ask that it be marked as "Commission's Exhibit 79."

The EXAMINER. The paper in question will be received and marked as "Commission's Exhibit 79."

(Paper offered in evidence, marked for identification as "Commission's Exhibit 79" and retained by the examiner.)

Q. I hand you another paper and ask you if you can tell us what it is?

A. It is a letter addressed to me from the Standard Education Society, January 24th, 1925.

Q. And you received that letter?

A. Yes, sir.

Mr. WINN. I offer this as evidence, and ask that it be marked as "Commission's Exhibit 80."

The EXAMINER. The paper will be received and marked as "Commission's Exhibit 80."

(Paper just referred to, marked for identification as "Commission's Exhibit 80" and retained by the examiner.)

Q. I hand you another paper writing, and ask you if you can tell me what it is?

328 A. This is a letter addressed to me—well, this is from the Standard Education Society also, addressed to me.

Q. And dated when?

A. Dated March 3rd, 1925.

Q. And you received that letter, did you?

A. Yes, sir.

Q. And who purported to sign for the Standard Education Society in this case?

A. H. M. Stanford.

Mr. WINN. I offer this paper in evidence and ask that it be marked as "Commission's Exhibit 81."

The EXAMINER. The paper will be received and marked as "Commission's Exhibit 81."

(Paper just referred to marked for identification as "Commission's Exhibit 81" and retained by the examiner.)

Q. You have not the books now, Miss Sterling, you say?

A. No; because I never accepted them.

Q. And you haven't any of the Loose Leaf Extension Service?

A. No, sir.

Q. Have you been released so far as you know, from your contract?

A. No, sir.

Q. Have you ever received any advice from the company to the effect that you have been released?

A. No. I could not have been, if I got that collection letter last summer, you see.

Q. Have you ever received back any of the money which you paid?

329 A. No, sir.

Q. Do you recall how you paid this money?

A. I paid it by check.

Q. Do you recall to whom the check was payable?

A. No; I could not swear to that, but I suppose it was to the Standard Education Society. It may have been their agent.

Q. You don't recall the agent's name?

A. No; I do not.

Mr. WINN. That is all.

The EXAMINER. That is all, thank you.

ALVIN HALVORSON was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your name?

A. Alvin Halvorson.

Q. You reside where, Mr. Halvorson?

A. At the present time at Detroit Lakes, Minnesota.

Q. You are the same Mr. A. Halvorson to whom the subpena was addressed by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes, sir.

Q. And you are here today in response to that subpena?

A. Yes, sir.

Q. In October of 1927 you resided where, Mr. Halvorson?

330 A. At Minneota, Minnesota.

Q. And what was your occupation at that time?

A. Superintendent of the city schools there.

Q. Did you at that time or approximately at that time deal in any way with a person purporting to represent the company publishing the National Encyclopedia?

A. Yes, sir.

Q. Will you give us as much of the circumstances as you can recall, Mr. Halvorson, please?

A. It must have been around the first of October 1927 that a man walked into by office one day and represented himself as the salesman for the Standard Education Society, selling the National Encyclopedia, and we needed an encyclopedia for the junior high school at that time, and I listened to his story, which was this approximately; that the encyclopedia proper was to be given to the school, provided they subscribed to the loose-leaf service, and as I recall, this loose-leaf service was to be extended over a period of ten years, and could be paid annually. The exact amount I do not recall. I accepted the proposition, and shortly afterward the books arrived and I placed them in the junior high school without checking up very closely on what they were. They were, however, called the National Encyclopedia. A few days later I received a part of the loose-leaf extension service, and
331 I placed that in a file, without checking it over very carefully. Later on I discovered that the National Encyclopedia and the Standard Reference Works, of which I had a copy in the other assembly, were the same, and I also remember that when I presented the bill to the board of education and made the remark that they could pay for this in annual payments, one member of the board said, "We don't want to monkey with that", as he put it, "and we want to pay all at one time", so a check was made payable to the Standard Education Society covering the entire amount. That entire amount, it seems to me, was in the neighborhood of $69.00 or $70.00, approximately.

Q. At the time you purchased the National Encyclopedia you did not know that it was the same, except for the title, as the Standard Reference Work of which you already had a copy?

A. No.

Q. I hand you a document, and can you tell me what it is?

A. This is the contract, I suppose you would call it, with the Standard Education Society, with coupons attached, and those coupons were to be sent in annually, and the loose-leaf service to be received when they received the coupons.

Q. Does that contract or bond, or whatever it may be called, purport to accompany the National Encyclopedia?

A. The title here is the Standard Reference Work.

Q. Did you notice that difference at the time you received that paper from the company?

332 A. The title here is the Standard Reference Work.

Q. Did you notice that difference at the time you received that paper from the company?

A. No; I did not.

Q. Does the Minneota school organization still possess the National Encyclopedia?

A. Yes, sir.

Q. Does it still possess the Standard Reference Work?

A. Yes, sir.

Mr. WINN. I offer this document in evidence and ask that it be marked as "Commission's Exhibit 82."

The EXAMINER. The paper in question will be received and marked as "Commission's Exhibit 82."

(Paper just referred to marked for identification as "Commission's Exhibit 82" and retained by the examiner.)

Q. Were any representations made to you by the agent, Mr. Halvorson, as to the moderness of this National Encyclopedia?

A. Yes. As I recall it, he represented it as just being off the press.

Q. When did you leave Detroit Lakes, Mr. Halvorson?

A. At 3:30 yesterday afternoon. The train leaves today at 5:45 on the Soo Line, and will arrive about midnight or shortly after.

Mr. WINN. That is all.

The EXAMINER. That is all, thank you.

333 ALBERT W. RANKIN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your name is Albert W. Rankin?

A. Yes, sir.

Q. You reside in Minneapolis?

A. Yes, sir.

Q. And have you any occupation at the present time?

A. Well, yes. I am still connected with the correspondence department of the university.

Q. What university?

A. University of Minnesota.

Q. And did you at any time have any connection with the Standard Reference Work, an encyclopedia published by the Standard Education Society of Chicago?

A. It was not called the Standard Reference Work, was it? Then, I was not.

Q. Did you at any time have anything to do, or have any connection with any of the predecessors of this organization?

A. I did.
Q. What was that connection, Mr. Rankin?
A. I was employed by the management, Mr. Welles, and
fterwards Mr. Stanford, as—no; I never had any connec-
tion with Mr. Stanford—I was employed by Mr.
34 Welles to write certain articles and supervise others.
Q. Then, you were the author of certain articles,
f a certain article or articles, and edited certain articles for
Ir. Welles?
A. Yes.
Q. And Mr. Welles was at that time publishing an ency-
opedia?
A. He was.
Q. Had you ever had any connection with that encyclo-
edia at a time prior to the proprietorship of Mr. Welles?
A. I had.
Q. And approximately what was that?
A. Mr. Aiton and I were close friends, and he was com-
iling—we were close friends, and we were both State in-
pectors of schools. As we travelled, we talked over matters.
wrote some and he wrote most of it.
Q. The Mr. Aiton, to whom you refer, is George Briggs
iton?
A. Yes.
Q. You have never, however, according to your statement,
the best of your recollection, had any connection with
Ir. Stanford in connection with the Standard Reference
Vork, which is the successor of these two works of which
ou have spoken?
A. No; I never have.
Q. Approximately when was it that you did your last
work in connection with the Standard Reference
35 Work, or any of its predecessors?
A. Oh, 15 years ago.
Q. I hand you a prospectus which contains on approxi-
ately the first or second page, a list of authors and editors.
re you the Albert W. Rankin, B. A., who is listed on one
ge there, as an author and editor?
A. I am.
Mr. WINN. I offer this prospectus in evidence with par-
cular reference to the name of Mr. Rankin, which is on
unnumbered page, approximately page 1 or 2.
The EXAMINER. The book in question will be received in
idence and marked as "Commission's Exhibit 83."
(Book just referred to marked for identification as "Com-
ission's Exhibit 83" and retained by the examiner.)
Mr. WINN. That is all the questions I have.

The EXAMINER. One moment, please. Do you recall what was the name of the encyclopedia for which you furnished material?

The WITNESS. Was it the Ready Reference? I think so. I think it was the Ready Reference.

By Mr. WINN:

Q. Was it Aiton's Ready Reference, or Welles Brothers Ready Reference, or both?

A. Both. They both handled the encyclopedia; that is, Aiton was subsequently paid $10,000 for his rights.

Q. Was the name of the encyclopedia, when the Welles brothers had it, Aiton's Encyclopedia?

336 A. I think it was just Ready Reference.

Mr. WINN. That is all.

The EXAMINER. That is all, thank you.

WILLIAM H. SHEPHARD was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your name?

A. William H. Shephard.

Q. You reside at Minneapolis?

A. Yes, sir.

Q. You are here today in response to a subpena directed to you by the Federal Trade Commission, in the matter of the Standard Education Society?

A. Yes, sir.

Q. What is your occupation?

A. Instructor in the public schools of Minneapolis.

Q. In the grade schools or the high schools?

A. In the high schools—special work connected with the supervising of activities in all the high schools.

Q. To the best of your knowledge and belief, Mr. Shephard, have you ever had any connection with the Standard Reference Work, a publication which is encyclopedic in nature, for the Standard Education Society of Chicago?

337 A. I have.

Q. What, approximately, was that?

A. I don't recall under what title or what published name it was at that time, but I received certain articles which I was asked to revise, relative to local matters, matters relative to Minneapolis, educational and otherwise, one or more articles.

Q. And did you revise them?

A. I did.

Q. Did you return them to the organization?

A. They were returned to the organization.

Q. Did you make those revisions in your official capacity as an employee of the public schools of Minneapolis, or in your individual capacity?

A. Well, I can't state that exactly. I assume that I received them in my official capacity. They were not a part of my official duties at all.

Q. Did you receive any remuneration for this work?

A. None whatever.

Q. Can you tell us approximately when it was that you did this work?

A. I don't know as to the time, but it was several years ago, a number of years ago.

Q. Well, would you say five years, or ten years, or fifteen years?

A. More than five years ago. It must have been in
338 the neighborhood of ten or more years ago, to the best of my recollection.

Q. To the best of your recollection it was ten or more years ago that you did this work?

A. Yes.

Q. I hand you a prospectus, which has been marked as "Commission's Exhibit 83", and I refer to an unnumbered page, approximately page 7 or 8, which contains a list of names purporting to be contributors and reviewers, and ask you if you are the W. H. Shepard, director department of social sciences, North High School, Minneapolis, Minnesota, who is referred to there?

A. I am.

Q. Your name is spelled incorrectly there, but that is you?

A. Yes, sir.

Q. Have you ever written any article to be contributed to this work?

A. I have no recollection of writing any complete article.

Q. And the only thing which you have reviewed would be articles referring to local things, local conditions, which were sent to you already prepared by the Standard Education Society?

A. As I recall it, I was asked to revise certain articles and bring them up to date—article or articles.

Q. Did you know at the time you revised those articles that it was the intention of the Standard Education Society to include your name in the prospectus as a contribu-
339 tor and reviewer thereof?

A. I do not recall having such an arrangement.

Mr. WINN. That is all.

The EXAMINER. That is all, thank you.

WILLIS M. WEST was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your name is Willis M. West?

A. Yes, sir.

Q. Do you reside in Minneapolis, Mr. West?

A. I do.

Q. What was your occupation, Mr. West, in 1908?

A. I was professor of history in the University of Minnesota.

Q. And how long did you continue in that capacity?

A. I served there 20 years. I stopped in 1912.

Q. You stopped in 1912?

A. Yes, sir.

Q. And subsequent to 1912—I was a farmer in northern Minnesota until along in the World War, and a little bit after; that is, I was away during the war from my farm, and I sold out in 1921 or 1922 entirely—I did not do any more farming after the war.

Q. What other occupations have you had?

A. I am a writer of textbooks, and that has been more recent, during the last few years—since I came down here.

340

Q. What kind of textbooks?

A. High-school textbooks on history.

Q. And they have quite wide circulation?

A. I would say fairly large.

Q. They are now used more or less over the United States?

A. Yes, sir.

Q. Did there come a time, Professor West, when you were the author of certain articles to be published in either Aiton's Encyclopedia, Welles Brothers Ready Reference Work, or the Standard Reference Work, published by the Standard Education Society?

A. Yes, sir.

Q. And approximately when and what were those connections that you had with them?

A. I have been able, since first talking with you the other day, to fix 1909 as the date when I wrote certain articles for Aiton's Encyclopedia.

Q. Subsequent to 1909 did you do any work in connection with any of these publications?

A. I have a hazy recollection of being asked to revise or look over for the Welles Brothers people certain articles of historical nature, and of doing so; that is, it is rather hazy. My impression is, however, that I did some of that editorial work, a small amount of that, after they took

341 control, between 1912 and 1917. My impression is that it was about 1912, soon after they took it, but that has to be a very general sort of a statement by me.

Q. Now, to the best of your recollection, have you done anything in connection with those articles since the Standard Education Society took over the plates?

A. I think not. I don't know, of course; that is, I don't know when they took over the plates. I don't know what the date was. I don't know just when Mr. Stanford—it is hazy in my mind, because Mr. Stanford was connected with the work in its second form, when it was controlled by the Welles Brothers, but I am quite positive that since he obtained control, and since they changed the name, that I have not done any writing.

Q. Have you had any correspondence with the Standard Education Society in this regard?

A. I have a recollection fairly clear, that Mr. Stanford wrote to me once, asking me—telling me that they were going to revise radically, and asking me to fulfill the promise I had made to Mr. Aiton on the old original work, to revise historical articles, and I infer that I replied to some such request, that it was improper for me at that time to do anything of the kind, as I was already under contract and doing pressing work. I do not recall any other correspondence on any such topic.

Q. So the best of your recollection is that you have not done anything or revised anything for the Standard
342 Education Society?

A. That is my impression.

Q. Would the articles which you wrote and revised for Mr. Aiton, or for the Welles Brothers, be out of date at the present time, unless they have been revised?

A. I do not recall enough of them to speak of any but one. This one article that I had a chance to look over yesterday would now be out of date, up to the point that I carried it, I think, because it was strictly a historical record. It would require much addition under that title, or under some other title, to bring it down to date, because it was an article upon international arbitration. The other things that I wrote, I do not remember the names of. They were short articles. I could not identify them now. I recognized this one, because it was signed, and I read it over after you called my attention to it, but I know I did read a very considerable pile of manuscripts, some in typewritten form and some in galley-proof form, for Mr. Aiton; such things as he took out and sent to me to read. Those I have no recollection of, except that there was a considerable amount of it, and I cannot say now whether that would be out of date

today, or not. Presumably everything of that kind needs some sort of addition or correction, modification, after 20 years—almost everything.

343 Q. You received remuneration for the work that you did in connection with Aiton's and Welles Brothers Encyclopedia.

A. In connection with Aiton's, yes, some kind of remuneration; it was largely a matter of friendship with Mr. Aiton.

Q. Have you received any remuneration, as nearly as you can now recall, from the Standard Education Society?

A. None at all. They took my old stock off my hands finally, at par, but they did that for everybody else who had any, I guess. That stock I paid cash for.

Q. I hand you a prospectus which is marked on one of the early pages as "Commission's Exhibit 83." The pages are unnumbered, but I call your attention to what would possibly be page 1 or 2, to what purports to be a list of authors and editors. Are you the Willis Mason West who is listed there as a staff editor of the Standard Education Society—this prospectus being or purporting to represent the Standard Reference Work?

A. I am undoubtedly the Willis Mason West that is there mentioned; yes.

Mr. WINN. That is all the questions I have.

The EXAMINER. Professor, to your knowledge, were you ever an assistant editor of the Standard Reference Work as such.

The WITNESS. I don't know that I could definitely state what a staff editor is. The Standard Reference Work—that was the title of the Welles Brothers work, wasn't it?

344 Q. (By Mr. Winn). No.

A. Oh, that was the title of the present work. I should say that I was not. I don't know, Judge, what sort of a paper I may have signed for Mr. Aiton, and I do not know what rights that gave to the people that acquired his rights, over me, and I don't know whether, when Mr. Stanford called upon me to revise articles, which he said I had agreed to do, and I declined, whether he was acting within any contractural rights or not. I suppose I signed some kind of a paper for Mr. Aiton. I suppose so, because I was called upon to do those things, but I have no recollection.

Mr. WINN. That is all.

The EXAMINER. That is all; thank you.

* * * * * * *

The EXAMINER. Mr. Winn, these are all the witnesses for Minneapolis?

Mr. WINN. Yes.

The EXAMINER. And, as I understand, then, it is desired that we adjourn to Kansas City?

Mr. WINN. Yes.

The EXAMINER. The taking of testimony in Minneapolis being concluded, the hearing is adjourned, to reconvene at Kansas City, Missouri, on Monday, May 27th, 1929, in the assembly room, Chamber of Commerce, at 10:30 o'clock a. m., on the date aforesaid.

345 KANSAS CITY, MISSOURI, *May 27, 1929.*

Met pursuant to adjournment, 10:00 a. m.

Before EDWARD M. AVERILL, examiner.

Appearances: Robert H. Winn, for the Federal Trade Commission. No appearance for the respondent.

PROCEEDINGS

Mrs. A. A. DODD was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Will you give your full name, please?

A. Mrs. A. A. Dodd.

Q. That is the way your subpena reads, does it?

A. I think it does. I have it with me.

Q. Yes.

A. Should I get it, to be sure?

Q. You are entitled to $2 for coming down here.

A. I am glad to get something out of it.

Q. You reside where?

346 A. 6412 Paseo.

Q. And you are here today in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes, sir.

Q. Did there come a time, Mrs. Dodd, when a person purported to represent the Standard Education Society called on you?

A. Yes.

Q. And approximately when was that?

A. That was November—I will give you the exact date.

Q. Maybe this [indicating] will help to refresh your memory.

A. November 30th, two years and a half ago. It was before that—no; December 14th.

Q. Just approximately is all. Around the middle of December 1926?

A. Yes.

Q. Did anything happen prior to the call of this person to which you could connect up with his call?

A. Yes; I had this blue letter [indicating].

Q. I hand you a paper marked "Commission's Exhibit No. 10" and ask you to tell me whether that is similar to the blue letter which you received?

A. It is identical.

Q. Except for the addressee?

A. The signature is the same. Identical, except for the addressee.

Q. How about the date?

347 A. November 30th. The date is different.

Q. What is the date of yours?

A. Mine is November 30th.

Examiner AVERILL. What year?

A. 1926.

Q. Do you recall the name of the agent who called upon you?

A. Yes; Murphy.

Q. Was there a card in this blue letter you received?

A. Yes.

Q. What did you do with that card?

A. I sent it back and told them I would see the agent.

Q. This was Mr. Murphy, the agent?

A. Mr. Murphy; yes.

Q. When he called, what was—as nearly as you recall—what was his story?

A. Well, he presented me with this complimentary set of books and informed me very emphatically that was strictly complimentary, with the privilege of referring other customers to me; and this work was an introductory work, up to date, up to the last minute, and he would like the privilege of allowing other representative people he had in mind to ask me for my indorsement. And the prospectus he had, it wasn't—didn't comply with what the actual facts were, and his prospectus and talk was very different from what the real thing was.

Q. Did he have a set of these books with him to be

348 presented to you?

A. No; he had a prospectus.

Q. And he didn't present you with the books personally, then?

A. No; and he furthermore tried to induce me to pay him $9.50, and I refused to do that, and he showed me a list of about a dozen representative women in Kansas City with

whom he expected to place these books. Among them, he asked me if I knew the names of these ladies, and I happened to know Mrs. Henry Ess. He pulled out a check out of his pocket signed by Mrs. Henry Ess, $9.50, and tried to induce me to pay him that much, so it left an even amount yet to be paid. Well, I didn't do it. I gave him a check for $5.00 after I called up the president of one of our banks and asked him if he thought it would be safe, and he said he thought it would.

Q. Now, Mrs. Dodd, you say this check he had was signed by Mrs. Ess. Do you know Mrs. Ess' signature?

A. No; no.

Q. Then would you say it was signed by Mrs. Ess?

A. He said it was her name.

Q. You don't know whether it was her signature on this check?

A. Oh, no; I think not. I think his own fix-up; no doubt about that.

Q. Now, Mrs. Dodd, did he say whether Mrs. Ess recommended the work or not?

A. No; he didn't say that. He said she bought it.

349 Q. Said she bought it?

A. That he had paid her $9.50, his first payment on it.

Q. He had paid her?

A. Yes; what he said.

Q. That he had paid her?

A. She had paid him, I mean.

Q. Now, you said a little while ago, Mrs. Dodd, that they were giving you this set of books. Now, we have been talking about $9.50.

A. Yes.

Q. What was that for?

A. The first payment on the loose leaves.

Q. You were to be given something and you were to purchase something?

A. Yes.

Q. What was it you were to purchase?

A. I was to purchase loose leaves, which was to extend over a period of ten years. That would keep me in touch with all important literature and transpiring things of the country for a period of ten years.

Q. Yes. Did the agent make any representations to you as to the newness of the work which was to be presented to you free of charge?

A. Yes; he did. He said it was an up-to-date work, just off the press.

350 Q. Did you get the books?
A. Yes.
Q. Did you get the extension service?
A. No.
Q. Did you get an extension service?
A. An?
Q. Yes.
A. No; I got none.
Q. You didn't get any loose leaves at all?
A. I have got a few loose leaves in my pocket, with the book; haven't had any since.
Q. You signed a contract at the time you gave him the $5?
A. Yes; I signed it.
Q. Has the company ever released you from the contract?
A. No; not that I know of. I still have a lawsuit. I don't suppose so.
Q. You are having a lawsuit?
A. Yes; they are suing me on it.
Q. Who sued you?
A. The company.
Q. The Standard Education Society sued you on that contract?
A. Yes.
Q. What is your occupation, Mrs. Dodd?
A. I have been a teacher all my life. Just now I am not teaching.
Q. Been teaching in the schools in Kansas City?
351 A. Yes. Then I had charge of a private school for a number of years. My husband is principal at the Manual Training High School now. He is sued, too.
Q. After you got the books, did you write to the company, Mrs. Dodd?
A. Yes.
Q. Have you a copy of that letter that you wrote?
A. No; I haven't.
Q. Is the copy in existence, so far as you know, the copy you sent to the company?
A. I didn't make any copies.
Q. What in effect was in the letter you sent them?
A. What I sent to them was my dissatisfaction with their dealings with me, and especially the loose-leaf service, and also the books they presented; of course, they were a gift, and I didn't complain much about those. The loose leaf, I was very much dissatisfied with, considered them a fake. I told the company that much in my letter, and you have the letter that they wrote me after this letter that I received, and I have never had any—written any other letter to them.
Q. I hand you two pieces of paper [handing same to witness]. Can you tell me what they are, just what it is?

A. Beg your pardon?
Q. Can you tell me what this is, not what is in it?
A. This is a letter from the Standard Education
352 Publishing Company.
Q. To whom?
A. To Mrs. A. A. Dodd.
Q. Dated when?
A. Dated January 10th, 1927.
Q. You received this letter?
A. Yes; I received this letter.
Q. I understand, Mrs. Dodd, you planned to use this letter in connection with the suit which the Standard Education Society has filed against you?
A. I am.
Q. Is that the reason you would prefer not to have it introduced in evidence in this matter?
A. I don't want to let it get out of my hands.
Examiner AVERILL. In other words, madam, you desire to retain the physical possession of that paper?
A. Yes.
Examiner AVERILL. All right.
Mr. WINN. I would like to have, in view of that fact, this letter read into the record.
Examiner AVERILL. All right. You better read it.
Mr. WINN (reading):

"H. M. Sanford, president; W. H. Ward, secretary; H. J. Reardon, treasurer
"Standard Education Society

353 "134 NORTH LA SALLE STREET, CHICAGO, ILLINOIS

"Please refer to file number joc.
"JANUARY 10, 1927.

"MRS. ARTHUR A. DODD,
"*6412 Paseo, Kansas City, Missouri.*

"DEAR MRS. DODD: Your letter of recent date regarding your account has been received and referred to me for reply.

"There is no need to be disturbed about the purchase of loose-leaf extension service. You are quite right in saying you purchased this and not the books.

"Please permit me to explain, with this purchase, you are entitled to a set of Standard Reference Work and also the privilege and benefits of our research bureau.

"The books are a gift to you, and the loose-leaf service is supplementary to them, while our research bureau supplies you with additional information as requested.

"The occurrence of receiving the extension service for a period of ten years is amply protected by your contract, and

furthermore a fund is held in reserve in the First National Bank in Chicago covering the output of this literature for a much longer time than the period of your subscription.

354 "The service consists of from two hundred to five hundred pages of new material each year, issued in two installments. Only topics of intrinsic value are presented to the readers. The ingenious method of eliminating unnecessary details, and with giving full, clear, and concise information on the events of the day, is among its commendable attributes. The skillful method of handling the subjects treated keeps you abreast of the times and makes it a ready information for the busy person.

"You are provided with a service bond covering your ten-year subscription to which is attached ten coupons, each representing one year as dated thereon. For each coupon you will receive two installments of the service each year. These coupons are furnished to make sure of your receiving the service regularly in case of change in address.

"Our research bureau is a medium through which you may receive special information, resulting from diligent research on any particular subject. The bureau is at your service at any and all times.

"The subscription to the service is sold for a period of ten years at an average of $6.95 per year, or $69.50 for the entire time. Like subscription to our periodicals, this is paid in advance, but we favor our subscribers by permitting them to remit this amount by the partial-payment plan.

355 This method of monthly payment plan has met with approval by our hundreds of subscribers. If you will give this case thought, you will not want your account to drag along for a period of ten years.

"Your contract which we hold covering this transaction is a protection to the parties of both parts, and now that we have fulfilled our side of the agreement we expect you to fulfill yours.

"Your balance stands at $65.31, and of this amount, $5.81 is due January 16th, and the remainder is to be paid in monthly installments of $5 each. Please remit the amount due and make a supreme effort to keep your account in good standing at all times.

"Assuring you of our confidence in this we thank you in advance for your prompt and careful attention.

"Yours very truly,

"STANDARD EDUCATION SOCIETY;
"Per L. A. WILLIAMS,
"*Collection Manager.*

"LAW: CG."

The WITNESS. Here is more communication, I don't know whether you want to use those or not.

Q. No. The books you received were the Standard Reference Work?

A. Yes. They didn't come from Chicago.

Q. Where did they come from?

356 A. Columbia, Missouri.

Mr. WINN. I think that is all the questions I have, Judge.

Examiner AVERILL. I haven't any.

(Witness excused.)

Mrs. R. H. JAMES was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your full name please?

A. Mrs. R. H. James.

Q. You reside where?

A. 6433 Penn.

Q. In what city?

A. Kansas City, Missouri.

Q. You are here today in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes.

Q. Did there come a time, Mrs. James, when a person purporting to represent the Standard Education Society of Chicago called upon you?

A. Yes.

Q. And approximately when was that?

A. About November, the 22nd or 3rd, last year.

Q. What year?

357 A. 1928.

Q. Do you recall——

Examiner AVERILL (interrupting). 1928?

A. Yes.

Q. Do you recall the name of this person?

A. Mr. Mahaffey.

Q. What, as near as you can recall, was Mr. Mahaffey's story?

A. He was giving me the set of encyclopedia which was quite equal if not superior to any other on the market valued at $108, I believe he told me.

Q. Did he tell you how he arrived at that valuation?

A. From the fact the other encyclopedias asked $118, but they were, of course, a little less, but they were a volume worth more than most others, being a value so that people

could take opportunity to buy this about $109. He was giving me this set.

Q. You say so that other people could have opportunity to buy this at $109. Did he say he sold it to other people at $109?

A. Yes; sold it to other people for $109. I think it was $109.

Q. The best of your knowledge and belief?

A. It has been quite long ago.

Q. Tell us, as near as you can recall, what other things he told you.

A. Well, he told me that the only obligation I was under was, should other people call me, I was to give them my opinion of the books, my honest opinion of this set of
358 books. The only thing, he didn't tell me this until he gradually worked up to it, the only thing I had to purchase was a supplement that was to keep the events up to time, keep the set of books up to the last minute so they would be up to date. And, of course, I thought I was getting the books up until he told me this at last, that the supplement would be $7, and the set of books would be—the value was approximately $109, and this supplement I was to pay for. The books were free.

Q. Were any representations made to you as to the newness of the ten volumes to be given to you free?

A. Yes; he told me it was absolutely the last word in encyclopedias, and covered more territory and was newer than any other encyclopedia on the market. In fact, the Britannica Encyclopedia, they had not made new issues for—I forget the period of years. They would probably get out their new issues in the next year or two. It was newer than anything else on the market.

Q. Did you sign a contract for the purchase of the extension service?

A. I signed a contract.

Q. Did you pay him any money?

A. $10. First he asked $70, and I thought that was a little too strong, and he immediately reduced the price to $10.

Q. Was that $10 to cover the whole purchase price of the extension service?

A. It was the first down payment you would make on it.

359 Q. You were still to pay $70?

A. That would leave me $60 to pay; I was to pay that at $5 a month.

Q. Have you ever been released from your contract, so far as you know?

A. I never heard anything more from them. I stopped payment of the check, do not have the letter on it at all.

Q. Were any representations made to you as to other persons who had purchased or recommended the work in Kansas City?

A. Well, he told me I was one of ten, no more than ten. No more or less.

Q. To be sold or given away?

A. Given away. Exactly ten. Among the people he gave me a list of, I knew of this Mrs. Clinton S. Barnes and Eleanor Welton.

Q. Did he say the books were to be given to them or that they had accepted the books?

A. They had accepted.

Q. They had agreed to purchase the extension service?

A. He had given them a set of books; he didn't say anything about extension service; just had given them the extension service.

Q. Did he say they recommended the books?

A. I was to call them, of course, just as people would call me.

Mr. WINN. I think that is all the questions I have.

Examiner AVERILL. I have nothing to ask.

The WITNESS. Is that all?

360 Mr. WINN. Yes.

(Witness excused.)

ADJOURNMENT

KANSAS CITY, MISSOURI, *May 27, 1929.*

Met pursuant to adjournment, 3:00 p. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn, for the Federal Trade Commission. No appearance for the respondent.

MILDRED GORSUCH was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your name, please?

A. Mildred Gorsuch.

Q. And you reside where?

A. 3015 Agnes.

Q. Kansas City, Missouri?

A. Yes, sir.

361 Q. You are here today in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?

A. Yes, sir.

Q. Did there come a time, Miss Gorsuch, when a person or persons purporting to represent the Standard Education Society of Chicago called on you?

A. Yes.

Q. And approximately when was that?

A. About July 12th or 15th, 1927.

Q. Do you recall the agents' names?

A. I do not.

Q. What, as near as you can recall, Miss Gorsuch, was the agent's story?

A. Well, he wanted to sell me the books on the basis they would be a very great help to me in primary work. He said they were full of projects that would help me in my primary work, and when I received the books there was nothing in it that would help me at all; just an encyclopedia. We told him we had several encyclopedias and didn't need anything like that. It was entirely different. Wasn't anything to help me.

Q. You did purchase the books?

A. Yes. Yes; we purchased them and sent them back as soon as they came.

Q. Did the agent tell you you were purchasing the books?

362 A. Yes.

Q. Did you answer that?

A. Yes.

Q. Was anything said about extension service?

A. Yes.

Q. Did you purchase that?

A. Yes.

Q. And did you purchase the books and the extension service?

A. Yes.

Q. What were you to pay for them?

A. $69.50.

Q. How many volumes were in the books, do you recall?

A. How many volumes?

Q. Yes.

A. No; I don't.

Q. Do you recall how many volumes there were to be in the extension service?

A. Well, the extension service was to be sent once every two or three months. It was loose-leaf, wasn't any volume at all.

Q. Weren't there to be binders in which the extension service was to be put?

A. He sent one binder.

Q. Weren't there to be other binders?

A. He didn't say anything about them. They sent one binder.

Q. You purchased the extension service and the books for $69.50?

363 A. Yes.

Q. And you were buying both?

A. Yes.

Q. And you got the books?

A. Got the books.

Q. And have you them now?

A. Oh, no.

Q. Where are they?

A. In Chicago, I guess.

Q. What did you do with them?

A. Sent them back.

Q. Have you ever been released from your contract?

A. I have.

Q. How?

A. Through a suit. I won the suit.

Q. Who filed suit?

A. The Standard Education Society, against me.

Q. Was the Standard Education Society successful in the suit?

A. No; they were not.

Q. The suit was on the contract you signed for the purchase of the books?

A. Yes; it was.

Mr. WINN. That is all of the questions I have. There are just one or two questions I want to ask Mrs. Ess.

(Witness excused.)

364 Mrs. HENRY Ess was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your full name?

A. Mrs. Henry N. Ess. Mrs. Phoebe J. Ess.

Examiner AVERILL. How do you spell that?

A. (Spelling.) E-s-s.

Q. You reside in Kansas City?

A. I have resided here uninterruptedly for fifty years.

Q. Did you ever purchase the Standard Reference Work which is published by the Standard Education Society of Chicago?

A. No, sir.

Mr. WINN. That is all I wanted to ask you.

The WITNESS. No, sir.

(Witness excused.)

MILDRED GORSUCH, being recalled as a witness, testified further as follows:

Examination by Examiner AVERILL:

Q. I understood in the course of your testimony that you stated that when this agent came to you he represented that he was selling you the books; is that correct?

A. No; that wasn't correct.

Q. Tell us, as nearly as you can recall, what he said
365 to you about the books and what he later—or first said to you about the extension service, whichever it was, as near as you can recall what he said; that is what we want to get at.

A. Well, this may sound strange, but the way he talked of the extension service, was secondary.

Q. What did he say first?

A. He began to talk about the books themselves, how much it would help me in primary work, and so forth, that the extension books were just secondary. He didn't begin talking about that until just at last, did he?

Q. Just a moment, don't ask her.

A. That is the truth.

Q. I understand that. What did he tell you about the books; I don't mean about the value of the books to you; what aid or assistance they would be; what did he tell you about the books in connection with your getting the books—how were you to get them?

A. The books were to be sent—we told him we weren't going to be home, we were going on a vacation, and the books were to be sent September 12th. He sent them earlier, as this series was to come whenever published. He thought about four times a year. But when we received them they came with the books and were to come just twice a year.

Direct examination by Mr. WINN continued:

Q. How much were you to pay for the books, Miss Gorsuch?

366 A. Why, I guess they were to be free, supposed to be free. I was to pay $69.50 for everything, for the extension service. The books were free.

Q. How did you arrive at that conclusion, did you guess at that?

A. I didn't arrive at that. That is what the agent said.

Q. He said the books were free?

A. Yes.

Q. The extension service was $69.50?

A. Yes.

Q. You testified previously that you were to buy the books and buy the extension service?

A. That was a mistake.
Q. That was a mistake?
A. Yes.
Q. You were in error when you testified to that?
A. Yes.
Mr. WINN. That is all.
(Witness excused.)

Mrs. ROSE M. GORSUCH was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your name please?
A. Mrs. Rose M. Gorsuch.
367 Q. Where do you reside here?
A. 3015 Agnes Avenue.
Q. And are you the mother of Miss Mildred Gorsuch, who just testified?
A. I am.
Q. And, Mrs. Gorsuch, you are here today in response to a subpena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?
A. I am.
Q. Were you present, Mrs. Gorsuch, during the time or any portion of the time that the agent or agents of the Standard Education Society were talking with your daughter?
A. Not during the time; that would be all the time.
Q. During all or part of the time?
A. A greater portion of the time; yes.
Q. You were there?
A. Yes.
Q. And what, as nearly as you can recall, was the substance of the conversation, Mrs. Gorsuch?
A. Well, that they had a set of books they were giving free.
Q. You mean that is what they said?
A. They said.
Q. That is what we want to get at.
A. The books were free. The extension service was what they were going to pay for; that was $69.50, but the
368 books were free. They were giving you the books. He reiterated that again and again; that the books were free.
Mr. WINN. I think that is all the questions I have.
Examiner AVERILL. That is all.
(Witness excused.)

DAISY B. FRYER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Your name, please.
A. Daisy B. Fryer.
Q. Where do you reside?
A. 3627 Paseo.
Q. In what city?
A. Kansas City, Missouri.
Q. You are here today, Miss Fryer, in response to a subpoena directed to you by the Federal Trade Commission in the matter of the Standard Education Society?
A. Yes.
Q. What is your occupation, Miss Fryer?
A. I am a teacher.
Q. Where?
A. In the Humboldt School.
Q. One of the public schools of Kansas City?
369 A. Yes, sir; one of the public schools.
Q. Did there come a time, Miss Fryer, when a person purported to represent the Standard Education Society, of Chicago, called upon you?
A. Yes.
Q. And approximately when was this?
A. It was in the month of July 1927.
Q. And tell us, as nearly as you can recall, what his story was?
A. That he was giving me a set of encyclopedia free, and that I had been selected from the Kansas City teachers, because I was a little bit out of the ordinary, I presume, he was giving me this set of books absolutely free. All they would require of me, was a recommendation of the books, was all for the return of it, nothing else.
Q. Did he later say anything about extension service?
A. I think he did mention something about extension service. Said the encyclopedia seemed to be sort of something separate and different in a way.
Q. Yes. Were you to purchase the extension set that he talked about?
A. I think he mentioned it was to be paid in some way, you know.
Q. Did you sign a contract for the purchase of the extension service?
A. Well, I signed something, I couldn't get rid of him. I told him I didn't want it but he stayed on for over an
370 hour and I was exasperated and had to get rid of him so I signed it.

Q. Did the books come to you?
A. Yes, sir; they came.
Q. Have you them now?
A. No, sir; I do not have them.
Q. Where are they?
A. I sent them back to the company.
Q. Sent them back.
Mr. WINN. I think that is all the questions I have, Judge.
Examiner AVERILL. I have none.
(Witness excused.)

EDNA GREEN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your name, please, to the reporter.
A. Edna Green.
Q. You reside where?
A. 2840 Campbell.
Q. That is in Kansas City?
A. Yes.
Q. And your occupation is what, Miss Green?
A. I am a teacher.
Q. And you were a teacher, two years ago, at that time?
371 A. Yes.
Q. Did there come a time, Miss Green, when you were called upon by someone purporting to represent the Standard Education Society of Chicago?
A. Yes.
Q. And, approximately, when was this?
A. About two years ago, near the first of June.
Q. Near the first of June two years ago?
A. Yes.
Q. Tell us, as nearly as you recall, what this person's story was?
A. He began by telling me he had some books to give to teachers who would give him the information and recommend the books and that, with this giving away of the books, he was giving this information that was published monthly, and that if we bought that, we would get the books, or something to that effect; news information and science and things of that sort, that was coming out every day.
Q. Did the man tell you that——
A. (Interrupting.) And he also said he would give me these books—these books were worth, I don't know how much money, I have forgotten, I would get them for a very, very great reduction, a very great reduction; I don't remember

what. It wasn't the book we were getting; we were to buy this information that was coming out. I was to get
372 the books that other people would pay—I forget how much for—I would get the books and information if I would examine the books, for this sum and—I have forgotten—somewhere in the neighborhood of fifty or sixty dollars; I have forgotten just how much.

Q. You were to get the books free?

A. Yes.

Q. And from your testimony now, the books ordinarily were sold——

A. (Interrupting.) For very much in advance of what I was paying for the books. Of course, I wasn't buying the books; I was getting the books and another circular.

Q. Extension service?

A. Yes; special service for much less than people would pay for just the books.

Q. You were to get the books themselves, free?

A. Oh, yes; the books were sent to me.

Q. The price you were to pay was only for the extension service?

A. Oh, yes; and very few people were being given that special offer that I was—the only thing I was to do to get these books was to write a recommendation or something to that effect.

Q. Were any representations made, Miss Green, as to the newness of the work?

A. Yes; they were practically off the press; just new. Then he showed me in one of two cases the copyright.

Q. Did he show the copyright of the prospectus?

A. Yes.

373 Q. Do you recall what year was in the copyright?

A. Of course, it was two years ago and I suppose it was—it must have been about that time, because I believed him when he said it was new.

Q. How many copyright dates were there on the page on which this copyright date was that he showed you, if you recall, more than one, or just one?

A. I don't recall; but I remember distinctly he said these are just off the press and then would tell me different things that were happening at that time. "You just can see they are off the press." He repeated that a number of times in talking.

Q. Did he say they were just off the press in that they had just been printed or just off the press in that they had just been written?

A. New material; new things just going on; that was the feature he was making of the books, they were new.

Q. Did you sign the contract for the purchase of the extension service?

A. I did.

Q. And did you receive the books and some of the extension service?

A. Received two copies which I mailed back. I received the books which I did not open.

Q. Have you the books now?

A. No; I paid the express on them back.

Q. I see. Have you been released from your con-
374 tract, so far as you know?

A. I have not.

Mr. WINN. That is all of the questions I want to ask.

Examiner AVERILL. I have none.

(Witness excused.)

Examiner AVERILL. Mr. Winn, is this all the witness you have here?

Mr. WINN. Yes, sir.

Examiner AVERILL. Then you desire to take an adjournment to reconvene at a date later set by the trial examiner after due notice to counsel for both sides?

Mr. WINN. Yes, sir; please.

Examiner AVERILL. Then, gentlemen, the taking of testimony in Kansas City is concluded and the case is adjourned to be reconvened upon notice from the trial examiner after communicating with counsel for both sides as to a date which will be convenient for them.

(Adjournment.)

375 UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF THE STANDARD EDUCATIONAL SOCIETY ET AL.

LOS ANGELES, CALIFORNIA, *August 15, 1929.*

Met, pursuant to notice, 10:00 o'clock a. m.

Before JOHN W. ADDISON, examiner.

Appearances: W. A. Sweet (Washington, D. C.) for the Federal Trade Commission.

376 PROCEEDINGS

Examiner ADDISON. Now, we will come to order and take further testimony, Commission Docket No. 1574, in the matter of Standard Educational Society and others. This is a

continuation of a series of hearings, the first of which was held in Tonawanda, Pennsylvania, on May 8th and the last one of which was held in Kansas City, Missouri, May 27, 1929.

WARREN D. DAVIS was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Will you state your name?
A. Warren D. Davis.
Q. Where do you live?
A. Long Beach.
Q. What is your business or occupation?
A. I am a physician and surgeon.
Q. How long have you lived in Long Beach?
A. Eight years.
Q. At any time did a person representing himself to be an agent of the Standard Educational Society, of Chicago, Illinois, call on you?

377 A. Yes, sir.
Q. About when was that, if you recall?
A. Well, I don't think I could tell the date. About a year and a half ago, but I would have to refresh my recollection with letters.
Q. I show you a letter dated November 25, 1927, and ask you if that refreshes your recollection as to the approximate date of the call?
A. (Inspecting.) Yes; he was there just in September or October.
Q. Of 1927?
A. Yes.
Q. What conversation did you have with him?
A. Well, shall I go back and tell the story?
Q. Yes; in your own words.
A. Along in August, it must have been, then, 1927, I received a letter, I think a copy of which is here, stating that as a prominent citizen of Long Beach I was to be given a set of books. So I handed the letter to my secretary, and she sent it away. Well, in about thirty days a young man called and told me about these books, and to my mind very grossly misrepresented them, because they are little more than a dictionary. They will take some word and will give a little more information on it than the dictionary will, but not very much, and I thought I was buying something that was practically like the Encyclopedia Britannica, along that

378 line. Well, then afterwards he sprung the idea of paying, I think it was $64.00, this $64.00 for the supplementary works, and every year I was to get loose-leaf pages, and they sent a little book with columns in it so that these

loose-leaf pages could be put in it. This agent represented to me, and made me believe that the books were worth over $200.00, but when they came I saw that I had been just an easy victim, and wrote the company, protesting. But before I wrote to the company I had my secretary write to them to get the price of the books. It came and I found out that the price of the books was $60.00, and she was entirely unknown to them, but the price of the books was the same as they had charged me for.

Q. I show you now this letter of November 25th, and ask you if that will refresh your recollection as to the exact amount?

A. $64.50.

Q. And wouldn't it be also plus the $5.00 that was paid, so that it would be $69.50?

A. The balance; that is right.

Q. The price then was $69.50?

A. The price was $69.50, and then I called up the Better Business Bureau—that prompted me to think I was such a fool as to get pulled into such a trap as that—I called up the Better Business Bureau, the manager of which I was well acquainted with, and told him about it and refused to make any more payments. I don't know whether they threatened to sue me or not; I don't recollect that. Anyway, I
379. just turned it over to the Better Business Bureau, and they wrote the company. It was practically taken out of my hands at that time, and I had forgotten all about it until Mr. Lock, the inspector, called 60 days or so ago and I turned over this correspondence to him. I think that is all.

Q. Was there any representation made to you as to the usual price that would lead you to get the impression that it was worth $200.00?

A. Oh, absolutely; the statement was made by this agent that the book—I don't remember the exact amount, but it was over $200.00; the entire impression was that the reference book was a superior article to the Encyclopedia Britannica.

Q. And that you were to get this work for $69.50?

A. That I was getting this work free, as I remember. I was getting something free. That is what made me suspicious as to certain details.

Q. And that the $69.50 was the cost?

A. For the supplementary books to be sent.

Q. The extension service, so called?

A. The extension service; that was right.

Q. You say your secretary found that they offered her the work for the same price?

A. Yes. I think there is a letter there to Mrs. McCullough. I know I had the letter, and whether the letter was sent to you or not I don't know.

Q. Did you see the letter?

380 A. Well, I saw it at the time.

Q. I show you a paper and ask you if you can tell me whether that is a copy of that letter?

A. (Inspecting paper.) Yes; this is a copy of that letter.

Q. Did you pay anything on account of that transaction?

A. $5.00.

Q. Was there any representation made as to the contributors to that work?

A. Oh, yes; they were very greatly experienced and, naturally, wonderful men, and that whole impression as given to me was like the Americana or the Encyclopedia Britannica, men of that class. That was the impression I had. They quoted her—this is December 30, 1927, they quoted my secretary—I had it addressed to her home so they would not be suspicious at all—a price of $69.50, including the extension work.

Mr. SWEET. I offer, then, in evidence the letter referred to by the witness, the preliminary letter received by him.

Q. I will ask you, I will show you that paper, and I will ask you if that is the preliminary letter that you referred to?

A. Yes; I signed it here so as to identify it.

Mr. SWEET. Also offer in evidence letter of November 25, 1927, and copy of letter to Mrs. Alice C. McCullough.

Examiner ADDISON. Upon what basis do you put in a copy?

Mr. SWEET. It has been identified as a copy of the original. I haven't the original letter, but Dr. Davis

381 has identified it as being—as not the original, and that this is a copy. He has testified that the quotation of $69.50 was also made to Mrs. McCullough, and that is in corroboration of it.

Examiner ADDISON. These will be received in evidence and marked "Commission's Exhibits Nos. 84, 85, and 86."

C. W. TAYLOR was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Your full name?

A. C. W. Taylor.

Q. Where do you live?

A. Glendale, California.

Q. How long have you lived in Glendale?

A. Ten years.

Q. What is your occupation?

A. Physician and surgeon

Q. Did you also have a person representing himself to be an agent of the Standard Educational Society of Chicago call on you at any time?

A. Yes, sir.

Q. About when was that?

382 A. It would be pretty hard for me to tell any date on this; it has been about, I imagine, four or five years ago, and since this happened, thinking that nothing would ever come of this, I destroyed all my correspondence a year or so ago when I moved.

Q. Do you recall the conversation at all that you had with this representative?

A. Yes, sir; I do.

Q. Will you state just what that was?

A. Well, it was like this: The man told me I was supposed to be a very prominent man in Glendale, and on that account he was giving me a set of books; came to my office and I was busy, and I thought they looked pretty good from what the sample was he showed me, and I bit. I was to pay $5.00 down on them; he was to give me the books and I was to pay for nothing but the extension service. I later found out there were several friends of mine that were all getting the books in the same way, and when I investigated I found that it was the method of selling the books.

Q. What representations were made, if you recall, as to the contents, the contributors to those books?

A. Well, they had to be the very best there was; that they were on a par with the Encyclopedia Britannica. That is what they referred to right along all the time. To be on a par with that, or even better. The best authors there were in the country.

Q. Was there any representation made to you that

383 this offer, or that the offer that was made to you was made only to a limited number of persons?

A. Only to a limited number. I don't remember the number of them so well; as I remember, I think it was somewhere in the neighborhood of 10 or 12 to be given away in Glendale as an advertising scheme.

Q. Did you tell us what price was asked for the extension service?

A. There was an extension service which cost $69.50—$5.00 of it in cash.

Q. The books were to be given free?

A. The books were to be given free.

Q. Relying on these representations, did you pay any money to this agent?

A. I paid $5.00 out.

Q. Did you receive the books?

A. I did.

Q. Did you take the matter up with them afterwards—with the Standard Educational Society?

A. I believe I had my lawyer write them one letter. I think I had my lawyer write the Federal Trade Commission about this.

Q. What, if anything, did you do with the books?

A. The books—I shipped the books back to them C. O. D.

Q. To whom?

A. To the Standard Educational Society.

384 Q. Where were they located?

A. In Chicago.

Q. Did they accept them?

A. They accepted the books; yes, sir.

Mr. SWEET. That is all, Doctor.

J. H. SINCLAIR was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Where do you live, Dr. Sinclair?

A. I live in Pasadena.

Q. California?

A. Yes.

Q. What is your occupation?

A. I am a college teacher.

Q. How long have you lived in Pasadena?

A. Seven years.

Q. Did a person representing himself to be an agent of the Standard Educational Society of Chicago call on you at any time?

A. Yes; he came up to the college to get, as he said, as many as he could, and he happened to drop into my office, and he represented himself to be a Review of Reviews man,

385 and the only extent to which I had any correspondence about it was the letter already produced that I wrote to the Review of Reviews about it.

Q. When was that call, if you remember?

A. I am not sure whether it was in June; I am not sure whether it was the 25th or 26th of June; I can only tell from this letter; it seems to be the 26th.

Q. Yes. Do you recall the conversation that you had with this man?

A. Somewhat. I would not like to say I could remember all the details of it.

Q. Will you relate as much as you can remember of it?

A. This man came and represented—stated that he represented the Review of Reviews, and that they were just getting out a new encyclopedia, and he wanted to get as many educators as possible to examine it and to possess it, if possible, and

he gave me a list of—he showed me a paper with the signatures given of President Wilbur, of Stanford, and it contained a large number of signatories that I was quite familiar with, the members of the faculty at Stanford, and he asked me if I would accept it, that there would be no charges for it, that there was a service also. The only thing he would ask me to pay would be the postage and service. I wasn't very keen for it because I had an Encyclopedia Britannica of my own, but he had the signatures of quite a few, the signatures
386 of quite a few of my friends, so I thought I might as well sign it, but I made no promise as to what letter I would give in connection with it, and he presented to me a list of signatures of my colleagues, in front of me, and on this list I put my signature on that, and then he asked me if I would give him a check for the postage, and I gave him $10.00, as it was supposed to be given free, and I did it as a sort of a protest. I did it on his suggestion more than anything else. And then he left me a copy of an order, which turned out to be a contract, as I recall it, for $89.00. I at once went down to see the dean and some of the other members, and found out that he had gotten away with exactly the same thing with them. So I took the matter up at once with the Standard Educational Society here in Los Angeles and asked them if they supported such a thing, if this man represented them at all, and I told them what he had done in regard to me, and as far as I was concerned I would have nothing further to do with them, and would not go on with the contract, and would see to it that I would have nothing to do with them at all. I said I would take up the matter with the Review of Reviews, which I did. I took the matter up with their people in Chicago, and they told me that they knew nothing about the company except that they bought something from them, but as far as the Review of Reviews was concerned, they had nothing to do with it at all.

Q. Where is the place of business of the Standard Educational Association in Los Angeles that you communicated with?

A. I cannot recall now; it was some place in this
387 section. I just wrote them and I took it up with the Better Business Bureau here in Los Angeles.

Q. Did you also take it up with the Standard Educational Society in Chicago?

A. I got a letter from them in connection with the correspondence I entered into with the Review of Reviews.

Q. What was the purport of that?

A. That they knew nothing about what their agent had said to me, but I had ordered the books and that is all there was to it. They had my contract and that was all

there was to it, and they would send them, something to that effect.

Q. Did they send the books?

A. Yes; they sent the books and I refused to receive them. They left them at the college and they kicked around there for some months, and after a while they disappeared. I think they came and took them back.

Q. You say you didn't examine them, so you don't know what they consisted of?

A. I know what they consisted of, yes. Two of my colleagues actually accepted them. They were absolutely worthless. They didn't represent authority at all. I would not have them in my library.

Q. Just what were they getting, a set of books providing for an extension service?

A. Yes. The Standard Educational Encyclopedia, I think it was called.

388 Q. And provided for an extension service?

A. Yes.

Q. And you understood that you were to get both the set of books and the extension service for the payment of $10.00 which you paid?

A. I was supposed to get all that for nothing, and $10.00 for the postage.

Q. You were to get it for nothing?

A. Yes.

Q. And the $10.00 was for——

A. For postage, he claimed, over a period of ten years.

Q. In sending the extension service?

A. In sending the extension service; yes.

Q. Were you asked to make any report on those books of any kind?

A. Yes; I asked him why he wanted to give me these books. I couldn't understand why he was giving them, and he said, "We hope to get a letter from you that you have examined them, and we want to use your letter."

Q. Were any representations made concerning the contributors to those books?

A. Oh, yes.

Q. Do you recall any names?

A. He didn't give the names, he just said they were outstanding authorities in the field.

Q. Were any representations made as to whether or
389 not you were being given a special offer not given to others?

A. Yes; I was led to believe that this list of names that I was shown represented the ones that the special offer was made to. It was a special offer; it was asking favors, and

these people more than anything else he wanted to have these names to use.

Q. A special favor that was not offered to others?

A. No; the books were to sell for $200.00. It was supposed to be an attempt to get the judgment of men in educational fields.

Q. And the usual price then was represented to you to be about $200.00?

A. Yes; that is what it was going to be sold at, as I recall it, to the best of my knowledge.

Mr. SWEET. I think that is all, Doctor.

WALTER W. SCHULTZ was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Your full name?

A. Walter W. Schultz.

Q. Where do you live, Doctor?

A. Puente, California.

Q. What is your occupation?

390 A. Physician and surgeon.

Q. How long have you lived in Puente?

A. 15 years.

Q. Did a person representing himself to be an agent of the Standard Educational Society of Chicago call on you at any time?

A. He did.

Q. When was that?

A. I don't recall the date, but I think you have a letter showing close to the date.

Q. I show you certain letters and ask you to refresh your recollection as to the approximate date.

A. (Inspecting papers.) It seems to be somewhere along in March 1928, according to the letter.

Q. Do you recall whether you received a preliminary letter before that call?

A. I did not.

Q. Did you have a conversation with that man concerning certain books and an extension service?

A. Yes, sir; I did.

Q. Will you relate the substance of what that conversation was?

A. This gentleman came to me and he said that there were a number of prominent individuals in Puente that were selected, and to whom the set of encyclopedias was to be given, and that in a number of months they were to start a regular selling campaign and sell these books directly to individuals at a figure, I think, of somewhere around

391 $160.00 to $165.00, as I remember it. And with this set of books he was offering groups of sets of fiction, a fiction book to be given—the set of encyclopedias was to be given and I was to pay for the loose-leaf extension service that was extended over a period of ten years, and that was to be paid for in monthly payments.

Q. What was the figure at which you were to buy this—this extension service?

A. As I recall it, it was between sixty and seventy dollars—65 or 70 dollars—something like that. And I was to pay for certain groups of fiction. I would pay $10.00 cash and another group I would pay $20.00 cash, depending upon the group selected. And this set of encyclopedias was represented to be equal to and better than the Encyclopedia Britannica, because it was an American work and naturally would be more interesting to us in America than the Britannica, which was a British work. And also that it was much more up to date, and it was kept up to date by the extension service. I had a set of encyclopedias that I had bought on a similar plan that I was satisfied with for the amount of money I paid for it. I don't recall how much I paid for it, but I felt that it was worth it, but for convenience, if this set was so superior to the one I had I felt, as the agent said, he would buy this one and discard the old set and keep the one that he was selling.

Q. You mean you were convinced by what he said about it?

A. Yes; I believed what he said about it. I wasn't
392 anxious even then to take the set, but the group of fiction books that he was offering I did rather wish to possess, so I finally agreed to sign the contract with him, but with this proviso: That if I found that he was just selling these books on a plan to sell to a certain number and never hearing from them again, and that it was really just a selling campaign that I would refuse to take—to keep the books and would demand my money back. That is one of the last things I said to him as he left. It happened that an attorney who had his office at that time in adjoining rooms to mine had a set of encyclopedias, and after this agent left my office I made a call into his office and examined the books and found they were the same ones that I was contracting for. And then I knew—I remembered that there had been a similar campaign some months before by some agent who had sold these books to several individuals in Puente, and I concluded that I was right in my suspicion. I examined it, the set, and saw that it was not any better than the set I had, but found that it was very poor, the articles in it, the articles that were in it were out of date, especially one concerning the Yosemite Valley, in which

it said that the best way to get into the Yosemite Valley at the present time was by horses for conveyances as the road was very rough. So I knew the set was very much out of date. Immediately I sat down and wrote a letter to the San Francisco office of the society and demanding that they not ship the books and that they send my money
393 back. I have the letter here that I received in answer to my letter. Each time they wrote more convincing letters, trying to persuade me to go on with my contract, and that as long as I had made this contract that I was obliged to continue it, to pay out on the books. Each time they wrote me a letter I would write them another telling them I expected my money back and telling them I felt the books were misrepresented to me. Finally, not getting any satisfaction with them, I wrote to the Federal Trade Commission, stating the case, and not long after I had written this letter to the Federal Trade Commission a representative of the society, this Standard Educational Society, came to my place and offered to make a settlement, and I told him the only thing I would do would be to have my money back. He had a check and he made it out for me and he paid me my money back.

Q. Doctor, were the payments of ten or twenty dollars, depending upon the fiction which you chose under the representation, a payment on account of the contract price? That is to say, if you got certain books of fiction you were to pay $10.00 on account of the $89.00?

A. Yes, sir.

Q. The contract price, and if you were to get others you were to pay $20.00?

A. Yes. There was one set of fiction which I liked better than the other, and he told me if I took that he would
394 let me have it by paying $20.00 down.

Q. But in both instances the fiction was to be given free? That is, outside of the contract price which you paid for the extension service, is that right?

A. The total amount that I was to pay was to be for the extension service only. It excluded the set of books themselves, which were to be given to me as a favor, and the three sets of fiction also to be given.

Q. Were any representations made as to the contributors to this encyclopedia?

A. They were represented to be the very best, and equal to the contributors to the Britannica.

Q. Was any representation made that you were to receive a special price?

A. There was.

Q. Was there any representation made that this special offer was made to a limited numb of persons, including yourself?

A. It was.

Q. I show you letters dated respectiv ly March 22, 1928, April 5, 1928, April 19, 1928, May 17, 1928, and ask you if you received those letters in the usual course of the mails?

A. (Inspecting papers.) Sure.

Q. Do you recall whether they were in answer to letters which you had written to the Standard Educational Society at Chicago?

A. At San Francisco; I wrote these letters to San Francisco.

395 Q. You wrote your letters to San Francisco?

A. Yes; and I got my answers from San Francisco.

Q. You got the answers from San Francisco, but you wrote direct to the Chicago office?

A. I wrote direct to San Francisco, that is where I was given to understand the books were to be shipped from. I wrote to the man in San Francisco not to have them shipped, and then my correspondence was with them in San Francisco.

Q. You never corresponded with them in Chicago?

A. I did not.

Q. Did you ever receive the books?

A. I did not.

Mr. SWEET. I offer these exhibits in evidence.

Examiner ADDISON. These four letters will be received in evidence and marked as "Commission's Exhibits 87, 88, 89, and 90."

Q. Did this representative ever state to you what his name was?

A. I think so, but I am not sure.

Q. Do you recall?

A. I do not recall his name.

396 DOROTHY WYSOR was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. What is your full name?

A. Dorothy Wysor.

Q. Where do you live?

A. I live in Los Angeles.

Q. How long have you lived in Los Angeles?

A. Nearly six years.

Q. What is your occupation?

A. Social worker; I am general secretary of the Travelers' Aid Society of Los Angeles.

Q. Did at any time a person representing himself to be an agent of the Standard Educational Society, of Chicago, call on you?

A. Yes; such person did, I think, in the year 1925, in the spring of the year. I have a list here of all the correspondence that I had regarding this; or, rather, I threw it away because I have moved once or twice since then; but it was in 1925.

Q. Did he tell you his name?

A. No; I don't believe that I ever had the name of the agent, nor did I have the Los Angeles address of the society.

Q. Did he state where the place of business of the society that he represented was?

397 A. I think not; but on the order, as I thought it was, but which later proved to be a contract, appeared the address of the society in Chicago.

Q. Will you state substantially what the conversation was that you had with this man?

A. This man stated that he was an agent of this society, and he desired to give me these books. I was very busy at the time with a number of people waiting to see me, but I questioned him rather closely as to why he desired to give me these books, and he explained because they were intending to advertise these books and that he was to give copies of them to some people. He said they would like to have from me, if I so desired after having the books, a letter or recommendation with regard to the books, and that is what they would get for it. He showed me a list of people who were subscribing to this book on these terms, mostly the names of college professors and quite a few of whom were known to me. I did not understand that I was paying for extension service. He stated that the only thing I would pay for would be the expressage on the books. I carelessly did not read the book order, as I thought it was, which I was signing, until after he had left the office. Later on in the day, when I had time to read this book order, it appeared to be a contract in which I had agreed to pay—I have really forgotten what sum it was; somewhere between $70.00 and $100.00—my recollection is that it was about $90.00.

Q. (Handing paper.) Would that refresh your recollection?

398 A. Yes; that is as I remember the sum. It seems to me to have been a larger sum for those books, then I read it later, when I read this contract, and I felt extremely indignant, and I wrote the Educational Society in Chicago

not to deliver the books, as I felt they had been misrepresented, and that it was one thing to offer to give me a set of books and quite another thing to ask me to pay $89.00 for them. I received the books on the following day. They were delivered in Los Angeles.

Q. Do you recall where they came from?

A. They came from this city. They must have come from this city. I never opened these books, but had them expressed back to the Standard Educational Society in Chicago, that being the address which I found on this contract. I wrote them at the same time stating that I was returning the books, that I had the express receipt for the books and I hoped not to see their salesman again, or something of that sort. For a period of several years, I should say rather years after that they threatened me with suits. They never acknowledged receipt of the books in their letters; they assumed that I had the books, and told me in every and each succeeding letter that I would be sued, and I replied to about every three or four of the letters, often writing a note on the bottom of the letter they sent me, and I suggested that they bring suit whenever they felt so inclined, and reminded them that I had returned the books. They finally gave
399 the names of various lawyers who had the case, and each time they came nearer and nearer to Los Angeles, and finally they arrived in San Francisco, and after about six years they seemed to give me up as a bad job, and I haven't heard from them since.

Q. But as a result of that conversation you understood you were to receive the set of books, the encyclopedias?

A. Yes.

Q. And the extension service?

A. Yes.

Q. As a special favor to you?

A. Yes.

Q. On account of your position?

A. Yes.

Q. And that you were to pay only the cost of postage of these books?

A. Yes.

Q. Which amounted to $7.00?

A. Yes.

Q. Did you pay that $7.00?

A. Yes; I paid them $7.00 by check at the time.

Q. Have you ever received it back?

A. No; no; I never received that back.

Mr. SWEET. That is all.

400 FRED I. SISKEL was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Your full name?

A. Fred I. Siskel.

Q. Where do you reside, Mr. Siskel?

A. Puente, California.

Q. What is your occupation?

A. Druggist.

Q. How long have you lived in Puente?

A. Close to three years, almost three years.

Q. Did a person representing himself to be an agent of the Standard Educational Society of Chicago call on you at any time?

A. There was two of them called on me.

Q. Did they call together?

A. I believe they were, they were both together at all times.

Q. About when was that call made?

A. It has been over a year ago, I don't recall the date now.

Q. Do you recall the conversation that you had with them?

A. Well, it so happened that I wasn't busy in the drug store at the time, it was after dinner, late in the afternoon, and they came in and they introduced themselves. I don't recollect their names, although they had their names on the card, and they came in, they said, with the intention
401 of giving me the set of books, expecting to use the store and my name as an advertisement for the purpose of placing their books in particular homes in that particular town. I was kidding them quite a lot for a while and couldn't see any reason why they should give me free a set of books, but I could see from the practical standpoint that as long as they wanted to place them in three or four hands like that, claiming that they were doing so for the purpose of using the name and referring people to the store or to me for reference, from that point of view I took them up, and they brought the books in and showed them to me. It was to be absolutely free of charge. I couldn't see that, but nevertheless, as I stated before, they wished to use my name, and so I took them up.

Q. Did they make any representations to you concerning the contributors to this encyclopedia?

A. They said this would be a reference work that would sell finally at over $100.00 per set, and that is all there was to it, and any time they sold a set of books in the neighborhood they wanted to be sure that I would be one to recommend them.

Q. What was the price quoted to you?

A. They told me the set of books was $69.50, and people had bought sets of books and that there was three volumes of fiction that went with it.

Q. That was to be given free?

A. Free, and in fact my set of books was already pledged from the Standard Educational Society.

402 Q. Do you recall whether they referred to the offer of an extension service?

A. They offered an extension service, and they told me that all I would have to pay for was the postage, and after I went on with them, why, they gave me a blank to sign; it was a regular contract blank of $69.00 and some odd cents, and then they demanded $5.00. After I asked them what the $5.00 was for, since they had promised them free, they said it was just a matter of form, that they would not want the whole country to know that they were giving books away, but that they wanted to know that they were placed in hands where they could refer them to for references.

Q. Did you understand from that conversation that you were one of a limited number of persons who received that offer?

A. They told me there was four of them was to receive them, and I was one of them on that list.

Q. Did you have any correspondence with the Standard Educational Society after that?

A. I don't remember whether I did or not. I know I got several letters from them and I just destroyed them.

Q. What was the purport of these letters, if you recall?

A. I think they were in regard to my contract, they had asked me to live up to the contract, and I just destroyed them.

Q. Did you pay any money on the contract?

A. I did. Later on I think I paid $2.50. I think it

403 was a monthly payment of $2.50. Then about six months thereafter some young attorney came to me and introduced himself, and he told me he was from the Standard Educational Society of San Francisco. He showed me where I was in wrong, where I had signed the contract, and I told him it was misrepresented. He said it didn't make any difference. And then he asked me what the set was worth to me. Well, I got two boys, and they seemed to take a little interest in those books, they seemed to take a lot of interest in those things, so I said to him, "I will split the difference with you, and give you $30.00." So I gave him an additional check of $30.00.

Q. Was that the total amount paid on that contract?

A. It must be about $37.50 that I had paid. But he showed me where I was in wrong in signing the contract and not

reading it over, but I took it out of sympathy, just like that. They asked me, and they said they could see more sets in the neighborhood.

Mr. SWEET. That is all.

404 BERTIE KALLGREN was thereupon called as a witness and, having been duly sworn, testifies as follows:

Direct examination by Mr. SWEET:

Q. What is your name?
A. Bertie Kallgren.
Q. Where do you live?
A. Puente, California.
Q. How long have you lived there?
A. Ten years and a half.
Q. Have you any occupation?
A. Insurance and real estate.
Q. Did a person representing himself to be an agent of the Standard Educational Society of Chicago call on you at any time?
A. He did.
Q. About when was that?
A. The fall of 1927.
Q. Did you have a conversation with him?
A. I did.
Q. Will you state what that conversation was?
A. I was secretary of the chamber of commerce at that time——
Q. Just one moment. Previous to this call did you receive a preliminary letter?
A. I did not.
405 Q. All right; go on.
A. I was secretary of the chamber of commerce at that time, and this R. Ralph——
Q. That was the name of the man who called on you?
A. Yes; he left his card. He said he was representing the Standard Educational Society, and that they were wishing to place their encyclopedia in our town at that time, and he said that they were giving these books to some of the representative people of the town. I, being connected with the chamber of commerce, he felt that I would be in a position to help them to offer the sale of these books, and, of course, there would be a little charge for those books, but what he wanted was a letter of introduction from me as secretary. And there was also to be an extension service. I told him that I had Collier's Encyclopedia with an extension service for ten years, which was very satisfactory, and I didn't think I wished any other set of encyclopedias. He stated that these were very superior to any other set and he felt

sure that I would want to substitute them for the set I had. We talked the matter over, and, of course, he showed me a list of representative people that had taken the books.

Q. Did you ever ascertain whether those people had actually subscribed or not?

A. I did not know them at all, for they were from different parts of the State and other places. But he said
406 there would be just two or three that would be given this privilege in our town.

Q. And you were one of the two or three?

A. Yes; I was one of the two or three.

Q. What was said as to the price?

A. Well, he said that the set of books like that was worth around $200.00, as I remember it, $175.00 or $200.00.

Q. And just what price were you to pay for them, if any?

A. I am not quite sure of the amount; I think it was $69.50, because I paid $9.50 cash. I gave him a check for $9.50 on the 4th of November 1927.

Q. Just what did you understand you were to receive for the $69.50?

A. I was to receive this set of encyclopedias and then the extension service.

Q. Were any representations made as to the contributors to the encyclopedia?

A. Yes; and of course they said they were of the highest rank, and made a very nice encyclopedia.

Q. Did you understand that you were to pay the $69.00 for the service, and were receiving the books free?

A. I believe that was the arrangement. I don't recollect postively, but it seems to me it was the extension service I was paying for and the books were a gift. I made another payment the next January.

Q. How much?

407 A. $11.36. I was to pay $5.00 a month, so on January 13, 1928, I sent them a check for $11.36, and that included postage of $1.36, all making a total of $20.86. But I didn't have time up to that time to really examine the books. It was my busy time of year, and I had had no time to look them over. After that I examined them and I found they were not up to representations, so the next dun I had I just wrote on the bottom of it, "Not satisfied. Kindly send for the books", something to that effect, at least. And then later I got one of their statements, and finally a letter came saying that if the amount wasn't paid they would bring suit, or put it in the hands of some collection agency, I think, of Ohio, Indiana. I took the letter to a local attorney, and he said he would do nothing about it, not to pay any attention to it. He said, in fact, he also

had a set of the books. So then, later, Mr. Williams is the manager of Southern California, and I got a letter from the San Francisco address on September 24, 1928, which I acknowledged. Then a man from Washington, D. C., called and asked me if I had had any transactions with them, and I said I had. He asked something about it, and then he spoke to me about the correspondence and he asked for the correspondence, and I said well, of course, our case was really closed and I didn't want to make any trouble for this concern. I said perhaps it was coming to me because I should have investigated it further before I signed the contract.

We have to pay for our experiences. So then I
408 gave him the correspondence, all except this letter.

Q. You gave it to the representative from Washington, D. C.?

A. Yes.

Q. Did he say who he represented?

A. I think it was the Federal Trade Comimssion man.

Q. You still have the books?

A. Yes, I wanted to return them, but this Mr. Scott, he came to my office at noon, and he came to the house, and I offered him the books right there, and he said he didn't want the books, they would cost him money to send them back. So he said if I would keep the books he would just cancel my contract as paid in full for the $20.36.

Q. The amount that you had paid on account of that?

A. Yes. He asked if I was absolutely satisfied, and I said I suppose I will have to be because I signed the contract and I have paid them out the money.

Q. You signed the contract, did you, without knowing that it was a contract?

A. I knew I would have to pay $65.50, but that the books were worth about $200.00, but I wrote them a letter as soon as I got this letter, calling their attention to the fact that the books were not as represented, and that I found some pages blank, and others were printed crooked, and some of the information was very ancient.

Q. But you understood at the time that you were
409 buying for $69.50 a set of books, the usual price of which was around $200.00?

A. Yes.

Q. And that you were being done a special favor?

A. On account of the position that I hold in Puente, also that I would be asked to write a little introduction—recommendation so they could use it for other people.

Q. Did you ever write such a letter?

A. Indeed not.

Q. I show you three letters, dated respectively November 9, 1928, June 25, 1928, and August 3, 1928, and asked you if you received those letters from the Standard Educational Society through the mails?

A. (Inspecting): Yes; I received those letters.

Mr. SWEET. I offer them in evidence.

Examiner ADDISON. Received, to be marked "Exhibits Nos. 91 and 92 and 93."

Q. I show you copies of letters dated respectively September 11, 1928, September 26, 1928, October 10, 1928, and ask you if those are copies of letters which you sent to the Standard Educational Society in regard to these books?

A. (Inspecting papers): They are.

Mr. SWEET. I offer them in evidence.

Examiner ADDISON. Received, to be marked——

Q. Do you wish to retain that card?

A. No; I do not.

410 Mr. SWEET. I will offer it in evidence, showing the name on the card.

Examiner ADDISON. Received. They will be marked "Exhibits Nos. 94, 95, and 96", that is, the letters.

Q. I show you a card, the card of R. Ralph, and ask you if that is the card presented to you by Mr. Ralph when he called upon you in reference to the sale of the set of encyclopedias and extension service?

A. Yes.

Mr. SWEET. I offer them in evidence.

Examiner ADDISON. Received, to be marked "Exhibit No. 97."

Q. I show you a paper headed the Standard Loose Leaf Extension Service, accompanying the Standard Reference Works, and ask you to tell us what that paper is, and what representations, if any, were made by Mr. Ralph?

A. It is supposed to be coupons, or the real request for the extension service for the ten years following the purchase of this set of books.

Q. How were those coupons to be used?

A. They were to be sent to the society each year, and the extension service mailed back to the subscriber. They retained the first one and sent me the first extension for the books.

Q. Did you state what the monthly payments were to be under your agreement?

A. $5.00.

411 Mr. SWEET. I offer this in evidence.

Examiner ADDISON. Received, to be marked "Exhibit No. 98."

Q. I show you a paper headed the Association of Bonded Attorneys, and ask you if you received that?

A. Yes; I received that from the Standard Educational Society, threatening me with suit unless I made a payment on the set of encyclopedias they sold.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. Received, to be marked "Exhibit No. 99."

Mr. SWEET. That is all.

Examiner ADDISON. The hearing will be adjourned until tomorrow morning at 10:00 o'clock.

412 LOS ANGELES, CALIFORNIA, *August 16, 1929.*

Examiner ADDISON. The meeting will come to order.

EDWARD A. FRANKLIN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Will you state your full name, please?

A. Dr. Edward A. Franklin.

Q. And where do you live, Doctor?

A. 727 West 7th Street, Los Angeles.

Q. What is your occupation?

A. Physician and surgeon.

Q. How long have you lived in Los Angeles?

A. About eight years.

Q. Did a person representing himself to be an agent for the Standard Educational Society of Chicago call on you at any time?

A. He did.

Q. About when was that, Doctor?

A. I can refresh my recollection best by looking at this paper [inspecting paper]; somewhere around January 1927. I don't know the exact date.

Q. Preliminary to that call, did you receive any
413 communication from the Standard Educational Society?

A. I did.

Q. Do you remember what the purport of that letter was?

A. The purport of the letter was that a set of books would be given to me free, as one of a number of prominent members of society here, or something to that effect, and there would be absolutely no cost. That was my understanding from the letter, and if I was interested to return the postal card, which I did.

Q. And subsequently a salesman called?

A. A salesman called upon me.

Q. Will you state what conversation you had with the salesman?

A. Well, my recollection is pretty good on this affair, because I have been a little perturbed about it. When he came to me he showed me this small copy of these sets of books, and after about half an hour's conversation told me this was to be given to me free, without cost. Then I asked him, "Well, don't I do anything for this?" He said, "No; you don't do anything for this, but we have an extension service which goes on for 10 years, and you can call upon us for references, and so on." I said, "Well, I would not be interested in that; I would be interested in the set of books if they are as represented, a good reference set of books." We talked on that point for quite awhile. I had him in my office, I believe, for about an hour. Finally I said to him, "I will take your set of books, providing I like them, and if you will send them to me on approval." At
414 first he would not do that, and finally I said, "That is the only way I will take them, because any book concern will send me books on approval." He thereupon accepted my statement, that I would give him the $5.00 initial payment, and if the books were not satisfactory I was to return them and I would lose my $5.00. Upon that I signed his order. Shall I go on?

Q. Yes.

A. The books arrived within a few days. I examined them and found them wanting for my purposes, and for what he had represented them to me to be. I looked up various references that were very inadequate, and they could not find a place in my library. I thereupon wrote the company, stating for it to please cancel this order for books, that I had no use for them, they were not as represented to be, and that I would send them back prepaid by express. And I have the receipt here of the books sent back within a few days, two or three days after receipt.

Q. From where were the books shipped to you, if you know?

A. I believe they were sent to my home.

Q. From where?

A. From San Francisco.

Q. And you returned them to San Francisco?

A. To San Francisco, to the San Francisco address.

Q. What did you understand the extension service to be?

A. I was not interested in it at all; I simply was
415 interested in the books. The extension service did not mean anything to me at all.

Q. Was any representation made as to the extension service?

A. There was some slight representation made, but when I told him I was not interested in it he spoke directly about the books.

Q. Did you understand what the extension service was?

A. In a measure, that I should call upon them for references upon any subject in which I was interested and they would give me a report.

Q. Did you understand that the service also was to keep the books up to date?

A. Yes; and to keep the books up to date.

Q. That was in the form of loose-leaf pages?

A. Yes; sort of a similar paper binding.

Q. You spoke about the initial payment; did you expect to pay anything for them?

A. I agreed to pay the $5.00, figuring it was worth that expressage for me to look at them, as much as to pay the expenses of sending them to me. But I paid the expressage going back.

Q. Was any representation made as to the contributors to that—to the contents of those books? Who contributed the articles to them, and so forth?

A. I don't recall anything about that. It was reported to be the very finest reference book obtainable, and most modern.

Q. Was any representation made as to the usual
416 selling price of that set of books?

A. Yes, I believe there was; that the selling price would ordinarily be much higher. I don't recall the figures on that.

Q. Much higher than what?

A. Than what I had agreed to pay.

Q. Which was $5.00?

A. No, no; the $5.00 was just for the examination of the books, and if I had accepted the books I would pay the balance of something like $65.00.

Q. And do you recall how much more the selling price was represented to be?

A. I don't recall the figures, no; I know it was considerably more than what I was going to get them for.

Q. You understood from the letter and from the conversation that you were receiving some special favor that others were not granted?

A. Oh, yes; that was distinctly understood.

Q. Have you had any further communication from those people?

A. Yes; quite a few. Yes, threatening to—if I didn't pay the balance—to sue me, and I turned the matter over to my attorney, James W. Mack, who is now in the Title Insurance

Company, and I instructed my attorney that I would fight this case to a finish, because they had falsely represented the entire transaction to me. Since then they have sent me personal communications and collection letters. I
417 have them here with me, some of them, from Chicago.

Q. And did you sign anything?

A. Yes; I signed the original order.

Q. What did you understand that order to be when you signed it?

A. The order for the books, that is what I was interested in. I didn't care about the service that he had represented.

Q. You understood that was an order for the books, showing where they were to be sent? What was the purpose of the order in your mind?

A. The purpose of the order was to receive the books, and if they were satisfactory to me to keep them and pay for them.

Q. Oh, I see. Did you receive back the $5.00 which you paid?

A. No.

Mr. SWEET. I think that is all.

JAMES L. WATSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. What is your full name?

A. James L. Watson.

Q. Where do you reside, Doctor?

A. 1567 North Edgemont.

418 Q. Los Angeles?

A. Los Angeles.

Q. And your occupation is what?

A. Physician and surgeon.

Q. How long have you lived in Los Angeles?

A. All my life.

Q. At any time did a person representing himself to be an agent of the Standard Educational Society of Chicago call on you?

A. He did.

Q. About when was that?

A. May I refresh my memory here?

Q. Yes, sir.

A. Well, prior to September 18, 1925, some few weeks, a couple of weeks, I should say. The exact date I do not bear in mind, it is not on this order blank.

Q. And prior to that call did you receive any letter from the Society?

A. Not to my knowledge, I don't remember; no.

Q. Will you state substantially—Did you have a conversation with the salesman?

A. Yes.

Q. Will you state substantially what that conversation was?

A. Well, he represented himself to be a representative of this company, and his first approach was that he wanted to give me a set of books.

419 Q. Did he tell you his name?

A. I don't remember.

Q. Go on.

A. And then he told me, if I remember, that he wanted to present me with a set of this standard loose-leaf extension service that he was—that the company was pursuing a policy of placing these with a number of men, and men more or less before the public, for the purpose of advertising, and that after looking the book over he wanted a recommendation from me if I could give it. And then after that he propounded further that as a condition to this gift that I should buy a ten-year loose-leaf service, and he would also give me a set of other books as an inducement.

Q. Were any representations made as to the contributors to this set of books?

A. Yes; he showed me a list of individuals who had had the books and who had given letters of recommendation.

Q. What I referred to is the contributors to the articles included in the books.

A. I don't remember.

Q. Was there any representation made as to the usual selling price of the books?

A. Yes, there was; he mentioned that the books sold for a certain price. What was the exact price now, I don't remember.

Q. Do you remember the approximate price?

420 A. No—giving me the idea that they were a very valuable work, and that they had sold to the public in general as a result of this advertising campaign for, well, I am not sure, but I think it was over $100.00.

Q. What was the price at which they were offered to you? What was the price at which the books were offered to you?

A. They were to be given to me, the books were to be given to me.

Q. What was the price that the extension service was to cost?

A. $89.00.

Q. Did you sign any paper?

A. I did.

Q. Did you sign it upon the—relying upon the representations made by that salesman?

A. Yes.

Q. Did you pay anything on account?

A. (Consulting papers). I don't remember.

Q. Were you asked to pay expressage on the books?

A. No.

Q. Did you see the books?

A. Yes.

Q. About how long afterwards, after that conversation?

A. I think about three or four weeks.

Q. Do you recall from where they were shipped to you?

A. Well, I don't recall looking on the shipment; no.

Q. Have you still got the books?

421 A. Yes.

Q. Have you had any correspondence with the Standard Educational Society of Chicago since that transaction?

A. Yes.

Q. What did that correspondence consist of?

A. Well, I have the letters here.

Q. Have you the original letter of September 18, 1925?

A. Yes; here it is (producing paper).

Q. And January 11, 1926?

A. Yes.

Mr. SWEET. I would like to offer those letters in evidence.

Q. You received those letters in the usual course of the mail?

A. Yes.

Mr. SWEET. I would like to offer those letters in evidence and withdraw them and substitute a copy of these letters.

Q. I will have you look at copies of letters dated September 18, 1925, and January 11, 1926, and ask you if those are copies of the original letters that you have in your possession?

A. (Inspecting papers). Yes; they are.

Examiner ADDISON. Received in evidence, with the understanding that copies may be substituted in lieu of the originals and marked "Commission's Exhibits Nos. 100 and 101."

The WITNESS. May I interpolate? You have asked me questions back there and I could not remember having

422 seen any information on the shipment of the books as to just where they were coming from.

Q. Yes.

A. But I notice these letters refer to the fiction being shipped from New York. That is as to the books themselves, not the loose-leaf books themselves, but the fiction only.

Q. The set of books supplied by the society was, as I understand it, a set of encyclopedias or reference books?

A. Yes.

Q. With a loose-leaf extension service and a set of books of fiction was to accompany the encyclopedias and an extension service?

A. That is right.

Q. And I understand you to say that your understanding of the matter was that you were to pay $89.00 approximately for the extension service and receive the encyclopedias and fiction free of charge?

A. That is right.

Q. And that that offer was made to you because of your profession, and that it was not made to others?

A. That is correct.

Q. Generally?

A. Not to the public in general.

Q. Not to the public in general, I should say?

A. That is true.

423 Mr. SWEET. I think that is all.

Examiner ADDISON. Did you pay in full for the books?

A. Yes; I paid for them.

Q. By Mr. SWEET. Have you received all of the extension service——

A. Not yet.

Q. ——leaflets?

A. No; they were to be sent as you send the coupons to the time of 1934 is the last coupon to be sent.

Q. Extending over a period of years?

A. Yes; ten years.

Q. Have you had any correspondence recently with the society? Did you answer those letters that are in evidence?

A. I did not answer those letters, and I sent a letter subsequently correcting the letter of recommendation that I had already sent them.

Q. What was your reason for correcting that recommendation?

A. After I had first received the set I looked them over and in what I thought was a thorough manner, as much as the time I had permitted, and sent them a letter stating that—well, I think I can read exactly the wording; this is the first letter I sent of recommendation: "With reference to the Standard Reference Work, in looking it over carefully I find the contents is of sufficient value and exhaustive enough for quite a ready reference on any subject. The ten-year extension service loose-leaf form sent being, I
424 think, exceptional, and greatly in advance of the usual

loose-leaf service, during the ten years." Now, then, I had had it over a period of some two years, and in the interim I had attempted to use it for reference on various subjects, not medical, of course, but subjects of general interest, scientific, geographical, and so forth, and I didn't find it measure up to my anticipations. So I wanted to correct the first letter and I sent the following letter. I sent this letter March 7, 1928, and I said: "The letter of recommendation I gave you for the work on January 8, 1926, for the Standard Reference Work, was after a more or less cursory examination. Since then many times the work has shown itself to me to prove incomplete for a scientific use, and is more applicable for use in a high school, or upper grammar grade school, and I can recommend the work, therefore, only with this reservation. In using any reference or recommendation by me for the work as a teacher for certain purposes, please be advised to withdraw from use my previous letter of January 8, 1926, and to substitute the enclosed." And I then wrote this final information in regard to the work: "After the use over a period of two years of the Standard Reference Work, I find it practically has no great value as an exhaustive encyclopedia. It would have a use, say, for higher grammar grade school or high school, or for school pupils where they don't want to go scientifically into any subject. My daughter is now using it in the above manner with satisfaction."

Q. That recommendation was requested by the salesman?

425 A. Yes.

Q. And was it given in any way in consideration of your receiving the fiction, and to the set of encyclopedias without cost?

A. I don't remember. I don't believe that that was represented to me, any fact in regard to it. That is a fair letter of recommendation that I could conscientiously give it, and I gave it according to my information at the time. I wasn't ever giving that, it wasn't understood that I had to give that in payment for the books.

Mr. SWEET. All right, Doctor, that is all.

FRED L. DEWEY, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direction examination by Mr. SWEET:

Q. Will you state your name?

A. Fred L. Dewey.

Q. Where is your residence?

A. 1340 West 90th Street.

Q. In Los Angeles?

A. Yes, sir.
Q. What is your occupation?
A. I am district manager for the Mackay Radio Telegraph Company and lieutenant commander in the Reserves, the Naval Reserves.
426 Q. How long have you lived in Los Angeles?
A. The last time, six years.
Q. Did at any time a person representing himself to be an agent of the Standard Educational Society of Chicago call on you?
A. He did.
Q. In reference to what was that call made?
A. In reference to the subject under discussion, the sale, or rather the gift of a Standard Educational Society set of books.
Q. Did you have a conversation with that salesman?
A. I did.
Q. Did he give you his name?
A. He did; but I will have to rely almost entirely on my memory on account of a fire that destroyed practically all of our files. But the proposition is quite similar to what I heard here this morning, except that the——
Q. In the first place, do you recall his name?
A. I don't.
Q. Will you state substantially what conversation you had with him?
A. He came into my office and told me that on account of my prominence, or what he claimed as prominence, as a radio technicist and personally in connection with my being with the United States Naval Reserve, that I had been chosen along with some other men he claimed to be prominent citizens of the State, and proper to receive a set
427 of these books free, and that there was to follow an extension service over a period of ten years, I believe. And this young man mentioned particularly, I think, John M. Robinson, or Henry M. Robinson, I should say, and the Governor of the State, and James Rolph, the mayor of San Francisco.
Q. You mean Mr. Rolph being mayor, not the governor?
A. Yes; the governor of the State and Mr. Rolph, I believe, and the governor was then, if I am not mistaken, it seems to me that this talk was about 18 or 19 months ago.
Q. And this conversation took place about 19 months ago?
A. Yes.
Q. Or some time later than that?
A. In the early part of last year.
Q. The early part of 1928?
A. Yes, sir.
Q. Go on.

A. And he told me that I had been selected to receive a set of these books free, and that there would be an extension service over a period of ten years for the loose-leaf form, this extension service to embrace articles by leading writers, particularly along technical lines. I referred particularly to radio, and I wanted to know whether the technicalities of radio would be properly covered, and he said it would by the leading members of the profession. Being in a sort of a hurry, and the representations that he made sounding
428 very good, I was anxious to get something that would be complete and up to date and that would keep one fully informed as to the latest developments, particularly in my line. I gave him $5.00, which was supposed to cover, as he stated it at the time, the express charges and the preliminary expenses on the delivery of these books, and inside of ten minutes he walked back into the office and left them. I took them home and examined them and found them to be anything but what they were represented to be, both as to binding and the paper used, and the material, I mean the reading material, the subject matter. Some of these sheets were printed in light ink so I could hardly read it, and others were criss-crossed and sheets that were criss-crossed, and anything but a businesslike looking volume. I examined some subjects that would be of interest to me, and I found it entirely inadequate.

Q. What particular subjects do you refer?

A. Well, in radio, I found that they were years behind. It is a rapidly moving science, it is true, but the books that he gave me were supposed to be up to date. These bound volumes were supposed to be up to the minute.

Q. Was any representation made as to who the contributors to the articles contained in these book were?

A. The leading writers on all the different subjects. I don't know as he mentioned any particular names.

Q. Was any representation made as to the usual selling price to the public of those books?

429 A. I believe he left me with the impression that the selling price would be something over twice the amount that he was asking me for the extension service.

Q. What did he ask you for the extension service?

A. $69.00. In addition to this, this same salesman called upon several members of my force. In one particular instance, I remember, when he went to a branch office and told the branch manager that I had sent him down there with instructions for this branch manager to subscribe to this set. Unfortunately I happened to be out of the office, but this branch manager went to the phone and he said, "I will call Mr. Dewey up." So immediately upon hearing this this man disappeared. He went out of the door and didn't come back.

Q. Was that true or untrue?

A. Absolutely untrue. I might say that the manager is my own wife.

Q. Have you paid any further amount of money to the company than $5.00?

A. $10.00.

Q. Was that made in one payment?

A. Yes; made to a Mr. Scott, who called at the office, an adjuster, I believe, I should put him in that category.

Q. Did Mr. Scott represent himself to be connected with the Standard Educational Society?

A. Yes, sir.

430 Q. Just what transaction did you have with Mr. Scott?

A. Well, I had already written—I believe not, as I recall it now, it was not until after I had paid this second $10.00 that I made a very thorough examination of the books, and I had paid him the $10.00, being in pretty much of a hurry, and feeling that perhaps the set was all right. But Mr. Scott finally came in a second time after I had written the Standard Educational Society at San Francisco, calling their attention to the fact that the books were not satisfactory, and he came into the office to try to clear up the situation, in which I told him the books were absolutely unsatisfactory, and I didn't want them and I didn't want anything more to do with them. Shortly after that I wrote to the Federal Trade Commission at San Francisco, calling their attention to this transaction and just how it was put up to me, the misrepresentations that had been made, and it was only a matter of two or three days when Mr. Scott came into my office and refunded me the $10.00.

Mr. SWEET. I think that is all, unless you have something more to add.

The WITNESS. Nothing more. I have one of my employees here. He is not under subpena, but he had some of the same experience as I have had. They threatened to sue him.

Mr. SWEET. Thank you.

431 LEO J. SELIGMAN, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET.

Q. Your full name, Doctor?

A. Leo J. Seligman.

Q. Where do you live?

A. 1415 Melrose Avenue.

Q. In Los Angeles?

A. In Los Angeles.

Q. Your profession is physician?

A. Physician and surgeon.

Q. How long have you lived in Los Angeles?

A. Since September 1923.

Q. Did at any time a representative of the Standard Educational Society of Chicago call on you?

A. Yes. It was December 1, 1924. He gave his name as S. L. Moreland.

Q. Did he tell you where the place of business of the Standard Educational Society was?

A. Yes, sir; he told me in Chicago, 189 West Madison Street, Chicago.

Q. Was that the first time you had heard of the Standard Educational Society?

432 A. Yes.

Q. Did you have a conversation with this representative about an offer of books that he was giving?

A. Yes.

Q. Will you state what that conversation was?

A. He came into my office; I remember his words. He says, "This is an advertising campaign we are doing. We are offering free, entirely free, a set of books to a limited number of men, prominent men, men who are prominent in the public eye. I just want you to give your opinion about those books." He showed me a list of statements from men of university life, and certain men which I believed to be very good. I was first under the impression that he really was telling the truth, but later it came out that he wanted $89.00 for the service for ten years, extension service.

Q. What did you understand that service to be?

A. Extension service that they would send it. He didn't give quite the entire details, but once or twice in a year, extensions on the books.

Q. That is, keeping the set of encyclopedias up to date?

A. Yes. As far as prices were concerned, he stated that I would have to pay per year $8.90.

Q. On account of the $89.00?

A. Yes; for ten years; and he further offered a free set of books, works of two or three sets of books, as a preliminary offer, the works of Mary Roberts Rinehart and

433 O. Henry. Personally, I didn't know much about those two authors. I looked these two books over, and they didn't seem to be so very good to me, and I asked him whether he had anything else to offer in place of the set of Mary Roberts Rinehart and O. Henry, and he said, "Just what you like", so I said I would like the Harvard Classics and the works of Balzac. He said, "Sure, you can have whatever you want", and he changed it in the contract. Now, later on, when it came to signature, I asked him why I would have to sign it, and he said, "It is all right; I will

just put your name down." So, you see, he put his name down.

Q. Did you write your name down?

A. He wrote my name, and later I got from the company over a dozen or more letters. Later on, claiming that I signed my name to it. After Mr. Moreland left I received this Standard Educational set, and it really is not worth much only for high-school boys and girls, and has no real scientific facts in it.

Q. Did you receive the set of fiction?

A. Well, I didn't receive what I ordered. All I received were the Mary Roberts Rinehart and the O. Henry; immediately afterwards I sent them a letter complaining about that, that I didn't order these works, but the other ones. And at the same time the contract was that I pay $5.00 down, which I did, and further every year $8.90 for ten years. He retracted this $5.00 I paid down. Then the
434 company wrote me a statement that I had to pay each month $5.00 until it was paid up. I explained the mistake. Now, this is a letter they sent me, and I wrote them, with a copy.

Q. Read the letter which you wrote them, whatever date it was.

A. That was December 31, 1924. "Dear Sirs: According to the contract signed by your representative, Mr. S. L. Moreland and myself, I should receive the Standard Reference Work, 23 volumes "Classics", and the works of Balzac, 12 volumes, free of charge. I agreed to pay $89.00 for the ten years' revision service. As for the rate of payment, your representative told me they would be $8.90 a year for ten years, and it would be up to me—of course—to pay the whole amount or a higher rate at any time. I told Mr. Moreland that I was not interested in the works of Mary Roberts Rinehart and O. Henry, and he changed it as stated above. I acknowledge receipt of the Standard Reference Work. The following day I received the works of Mary Roberts Rinehart, which were not ordered by me; they are at your disposal as I have no use for them. I signed the receipt, supposing the parcel contained the books I really wanted. In your letter of December 16, 1924, you fixed the rate of payment with $5.00 a month, as it was not provided for in our contract; I beg to change it according to the agreement made with your representative. I would be sorry if your representative did not follow your instructions properly or did send you an order different from the one signed by me. Trusting that there will be no further mis-
435 understanding I remain, Yours very truly." Now at that time I had an impression that Mr. Moreland

changed that. It was copied from the original contract that he signed. It was printed Mary Roberts Rinehart, and $5.00 was paid on it, and then he forged my signature, I am absolutely convinced, because that referred to that. But I have no proof of that.

Q. Did he give you a copy of the order which he signed your name to?

A. The original, I didn't see it; the copy I have here, and he signed my name.

Q. He signed your name to what?

A. To the copy.

Q. And left it with you?

A. And left it with me.

Q. Did you see him sign the original?

A. No; he signed my name for me in the place where my signature would be.

Q. Was that with your consent?

A. Well, I asked him whether I would not have to sign it. I didn't see it. He said, "Oh, it is just a matter of form. We just want to have your name. You don't need to sign it." That it what he said, but after that the company referred to my signature in their letter, in spite of that letter I sent to them, and they never paid any attention to the other statement in there to the works which the
436 representative had agreed to send to me, and they sent me only one loose-leaf extension service. These they sent me every month, and for a few months they sent me statements, and then threatening letters for certain attorneys, collection agencies, and so forth. I received a letter only a few weeks ago.

Q. How much did you pay on account?

A. $5.00 down; I didn't pay any more, because I didn't get the thing I wanted. Then about two weeks ago there were two representatives of this company in my office, and they said, "We would like to straighten this affair out with you", and I said, "I don't want to have anything more to do with it", and I had the box there, and I said, "They are at your disposal, the Standard Reference Work, and the works of Rinehart, and I want you to refund the $5.00 I paid down, and I don't want to deal any more with your company, and that is all." I assured them several times that the books are at their disposal and they can have them, and they never answered my letters when I explained to them that the representative misrepresented them. They never bothered with it, but they sent the works to me, and the last letter they sent me they said, "You are up for the biggest shock of your life."

Q. Did you tell us whether or not they made—did Mr. Moreland make any representations as to the usual selling price to the public of that work?

A. Yes; he told me that the price of it, $89.00, was
437 only for the extension service. I don't remember, but I think he said the set of books would sell at $120.00 to $180.00.

Q. To whom?

A. To the public.

Q. Ordinarily?

A. Yes.

Q. Did he say that he was making a special price to you?

A. Yes, that was really the case; I had only to pay for the extension service.

Q. The books were being offered as a gift?

A. Yes.

Q. And the extension service was a special price to you?

A. No; that was the ordinary price of the extension service only.

Q. That was the ordinary price to anybody?

A. Of the extension service.

Q. But they ordinarily didn't give to the public the reference books and the fiction free?

A. Yes; that is right.

Q. And that you were specially picked out for that special favor?

A. Yes.

Mr. SWEET. That is all.

438 A. E. Ross was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Where do you live, Mr. Ross?

A. 401 South Bixel.

Q. In the city of Los Angeles?

A. Yes, sir; the city of Los Angeles.

Q. What is your occupation?

A. Radio operator.

Q. How long have you lived in Los Angeles?

A. Seven and one-half years.

Q. Did a representative of the Standard Educational Society of Chicago call upon you at any time?

A. Yes, sir.

Q. When was that, if you recall?

A. Approximately March 1928.

Q. Did you have a conversation with him?

A. Yes.

Q. Did he state what his name was?
A. Yes, sir.
Q. What was his name?
A. I cannot recall it.
Q. Did he state where the office of the Society was located?
439 A. He said the head office was in San Francisco, but they had a local office in California, located in San Francisco.
Q. You mean the head office was in Chicago?
A. Yes; the head office was in Chicago, and the local office located in San Francisco.
Q. Will you state what conversation you had with him in substance?
A. It was approximately the same as Mr. Dewey's.
Q. I would like to have you state in your own words what he offered you.
A. He said he wanted to give me this set of books for advertising purposes.
Q. What did he state the books were?
A. A set of reference books, the Standard Educational Society Reference Works, he called them. If I would give him a letter of recommendation he would give me a special rate on it.
Q. What was that rate?
A. The price was $69.00.
Q. Was anything to go with the set of books?
A. Yes; he was to mail me every six months a set of loose leaves as a supplement to keep the book up to date, and I believe he left the books with me, and I believe the first supplement was included in these books. I told him that I didn't have any money with me, as I was at the plant where I worked. He said that was all right, he would leave the books with me anyway. He led me to understand that
440 I would pay for the supplements yearly, that was the only agreement he would make with me. That was a verbal agreement with the salesman, that I had with him. I relied on him to make the agreement that way.
Q. That was the agreement, to pay $69.00?
A. $69.00 in small payments, $5.00, or rather $6.90 a year, to be sent in by me as I received the supplements. In the course of a month I received a letter from the company stating that they had given me credit for $5.00, which I could not understand as I had not paid them anything.
Q. You had not paid the $5.00?
A. No; and that I was to pay this contract for $5.00 a month, which I couldn't understand. So I returned the books to them and they refused to accept delivery on the

books. I paid no further attention to them until they sent their adjuster, or whatever he was, out to see me, and rather than have any further trouble with them I signed an agreement, I believe. They withdrew all claims and I paid $6.25, I believe.

Q. So that in all you paid them $6.25?

A. $6.25, and I paid the express charges returning the books to them.

Mr. SWEET. That is all.

441 JOHN ADAMS COMSTOCK was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Your full name?

A. John Adams Comstock.

Q. Where do you live, Mr. Comstock?

A. 219 West Avenue 42, Los Angeles.

Q. What is your occupation?

A. At the present time scientific director of the Los Angeles Museum.

Q. How long have you lived in Los Angeles?

A. I have been here since 1910.

Q. How long have you been connected with the Los Angeles Museum?

A. Off and on nearly three years, but my present permanent post only about a year.

Q. Did a person representing himself to be an agent of the Standard Educational Society of Chicago call upon you at any time?

A. He did; two representatives.

Q. About when was that?

A. That was in December 1927.

Q. Did they give you their names?

A. They did.

442 Q. Do you remember what their names were?

A. I remember one of them, I recall fairly well; one was Mr. Patton, and the other one, I believe, was Mr. Stevenson, but I am not certain of that second one.

Q. Did they state what they were prepared to do at this time?

A. They said they were representing the Standard Educational Society of Chicago, which had a branch office in San Francisco.

Q. Will you state the conversation which you had with those gentlemen concerning the offer, if any, that was made to you?

A. They stated that in view of our interest in educational matters, or what they considered as our prominence in the local community, that their organization had decided to present, as a matter of advertising, a complete set of their Standard Reference Work, free of all cost to me, providing that if on examining the books I felt that I could give them a letter of recommendation which could be used for sales purposes. That the work would remain in my hands without any cost whatsoever. And then he supplemented that statement with the fact that it was policy for their organization, since this was a standard reference work, it was to be kept up to date by a loose-leaf system, it was the policy of the organization to make a very nominal charge for said loose-leaf system, but that to offset this they would give me a set of different works to come from a certain list, so that actually it would be no cost to me whatsoever. The understanding
443 distinctly was that I was to examine these and that if they didn't measure with my full approval that I would not have to keep them.

Q. Were any representations made as to the contributors to the articles in that reference work?

A. They made considerable representations along that line, but while the names they used were recommended in the pages which they represented, I don't recall at this time any distinctive names, but they did have numerous letters, in recommendation of the work from prominent people, some of whom I knew personally.

Q. But you don't know whether they were authentic letters or not, do you?

A. One of them, I felt, was an authentic letter, because I knew the man's name.

Q. Who was that?

A. That was Prof. Barton Warren Ebermann, director of the Natural History Museum in San Francisco.

Q. Was any representation made as to the usual selling price to the public of this extension service?

A. Their statement was that the set itself when finally placed on sale with the public would sell at, as I recall it, something in the neighborhood of $180.00 for the set.

Q. You mean what set?

A. The books which were to be given me free, the Standard Reference Work complete.

Q. And the extension service?

444 A. No; the extension service would be in addition to that, as I recall it. The extension service, and so forth, was the only thing that I was supposed to pay for, if I accepted the set.

Q. Was there any representation made as to whether or not this offer made to you was a special offer made to you and not to the public generally?

A. The distinct statement was that it was being made to me as one of a select list of professional and scientific men, a list that had been prepared by the Chicago office.

Q. What happened after that conversation took place, if anything?

A. They presented what I thought was a statement of this matter, and in accordance with my understanding, for me to sign. I signed it, but unfortunately I didn't read it, as I was very busy, and we have a big institution there. Afterwards I discovered that it was a definite contract. Then the set of books was sent to me, and delivered to my downtown office, where at that time I was maintaining a downtown office as well as the museum. I examined the books and found them entirely unsatisfactory, and didn't measure in any way to the standard the agent had represented, and I wrote the organization that I wished to return them, and since I had paid $10.00 on account of this extension service I would like a refund of the $10.00. I received a letter from the organization in answer to that stating that I had
445 signed a definite contract and that they could not excuse me from this contract and they could not return my $10.00.

Q. What is the date of that letter?

A. The letter which they sent in answer to mine?

Q. No; the letter which you just referred to. You stated you received a letter from them.

A. The letter which I wrote them stated that I wasn't satisfied with the work and that I wished to return it. I have a copy of it here, dated January 3, 1927.

Q. The letter of January 3, 1927, was written by you after you received a letter from them of December 15, 1927; is that right?

A. Correct, sir.

Q. Have you the letter of December 15, 1927?

A. I have the original letter here.

Mr. SWEET. I offer that letter in evidence, and I will substitute a copy, so that the doctor may retain the original.

Examiner ADDISON. This letter of December 15th will be received in evidence, with the understanding that a copy may be substituted for the original and marked "Commission's Exhibit No. 102."

Q. I show you a copy of a letter dated January 3, 1927, and ask you if that is a correct copy of a letter that you sent to the Standard Educational Society in the usual care of the mail, in answer to exhibit no. 102?

A. (Inspecting paper.) It is a correct copy.

446 Examiner ADDISON. This copy of letter of January 3, 1927, from Dr. Comstock to the Standard Educational Society, will be received in evidence and marked "Exhibit", in accord with counsel's request, "No. 103."

Q. Have you an answer to that letter?

A. I have an answer to that letter.

Q. What is the date of it?

A. Dated January 12, 1928.

Mr. SWEET. I offer that in evidence and wish to substitute a copy of it.

Q. If you will, examine the copy of it and tell me whether that is a correct copy of it or not.

A. (Inspecting paper.) That is a correct copy of that letter.

Examiner ADDISON. This letter of January 12, 1928, is received in evidence with the understanding that a copy may be substituted for the original and marked "Exhibit No. 104."

Q. Did you reply to that letter?

A. I did.

Q. I show you a copy of a letter dated January 15, 1928, and ask you if that is a correct copy of your reply?

A. That is a correct copy of my reply.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. Received in evidence, to be marked "Commission's Exhibit No. 105."

Q. Have you had a letter from the Standard Educa-

447 tional Society, dated January 23, 1928, in reply to that letter?

A. I have the original letter.

Q. Will you look at this paper and tell me whether or not it is a correct copy of that letter?

A. That is a correct copy of that letter.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. This letter of January 23, 1928, is to be received in evidence with the understanding that a copy may be substituted in lieu of the original and marked "Commission's Exhibit No. 106."

Q. Have you any other correspondence with the Standard Educational Society?

A. I have quite a number of other letters covering the some matter.

Q. Did you reply to the letter of January 23d, in evidence as exhibit no. 106?

A. I did reply to that letter.

Q. Have you a copy of your reply?

A. I might state that before replying to that letter I received another communication from them, and my subsequent reply was to both of these communications.

Q. What was the date of that communication?

A. Their communication to me was February 15, 1928.

Q. I show you a paper purporting to be a copy of a letter to you from the Standard Educational Society, dated
448 February 15th, and ask you if that is a correct copy of that letter?

A. (Inspecting paper.) That is a correct copy of that letter.

Mr. SWEET. I offer that letter in evidence, substituting a copy.

Examiner ADDISON. This letter of February 15, 1928, will be received in evidence with the understanding that a copy thereof may be substituted in lieu of the original and marked "Commission's Exhibit No. 107."

Q. I show you a letter dated February 22, 1928, to Mr. J. V. O'Brien, of the Standard Educational Society, and ask you if that is a true copy of a letter which you sent in reply to exhibit no. 107?

A. (Inspecting paper.) That is a correct copy of my original carbon copy of letter to them.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. Received, to be marked "Exhibit No. 108."

Q. Have you had a letter from the Standard Educational Society to you dated February 29, 1928?

A. I have a letter.

Q. I show you a paper dated February 29, 1928, and ask you if that is a correct copy of that letter?

A. (Inspecting paper.) That is a correct copy of that letter.

Mr. SWEET. I offer the letter in evidence, substituting a copy therefor in lieu of the original.

Examiner ADDISON. This letter of February 29th
449 will be received in evidence with the understanding that a copy may be substituted in lieu of the original and marked "Commission's Exhibit No. 109."

Q. Did you reply to that letter?

A. I did.

Q. I show you a paper dated March 13, 1928, and ask you if that is a correct copy of your reply?

A. (Inspecting paper.) That is an original carbon copy of my reply.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. It will be received in evidence, to be marked "Commission's Exhibit No. 110."

Q. Are the statements contained in the copies of letters from you to the Standard Educational Society put in evidence in this proceeding true and correct statements of the facts?

A. They are true and correct statements of the facts.

Mr. SWEET. That is all.

450 BERNARD ALEXANDER UHLENDORF was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Your full name, please?

A. Bernard Alexander Uhlendorf.

Q. Where do you live?

A. 1019 North Orange Grove, West Hollywood.

Q. What is your occupation?

A. Professor of German, University of California, Los Angeles.

Q. How long have you lived in Los Angeles?

A. About four years.

Q. Did a person representing himself to be an agent of the Standard Educational Society of Chicago call on you at any time?

A. Yes, sir.

Q. When was that?

A. About April or May 1926.

Q. In reference to what did he call upon you?

A. About a set of books called, or which he called Reference Works of scientific value which was to be given to me as a favor for a letter of recommendation which would be of extreme value to them as an educator—coming from an educator, and one of several men whom he was seeing at the University. He showed me a list——

451 Q. Go on with the conversation that you had.

A. He showed me a list of letters, a series of letters, some people from Berkeley, some from Leland Stanford, and when I inquired what the Standard Educational Society was, and about the publication, he said it was the same organization that put out the Standard Dictionary, and I was gullible enough to believe it. And he said the work was compiled by prominent scholars, such men as Thorndyck, and college names, college presidents, and perhaps the late president of Harvard. I am also positive that David Starr Jordan was mentioned, the late president of Stanford, and I was about to pay $10.00——

Q. In the first place, Professor, what was the offer made to you exactly, what did it consist of?

A. Well, it consisted of a gift——

Q. What did the gift consist of?

A. The gift consisted of a set of, I think, ten volumes, of which he showed me the binding, and the thickness of the volumes. They were volumes about that size [indicating], and three sets of fiction, works by Guy de Maupassant, Balzac, and I think by Thomas Hardy, and each of these sets, he said, was valued at about $25.00, with handsome bindings, fine editions; and in addition to that I was supposed to receive the extension service over a period of ten years, and every something like three or four months, accumulative extension work and the encyclopedia.

Q. At what price was that extension service offered to you?

452 A. Well, I was supposed to pay at first not more than $10.00, simply express charges, and I think his commission, that he was to get. He told me that the ordinary price, the price to the ordinary public, was something like $150.00. He named me exactly $150.00. However, I saw the set advertised about three or four months later at $89.00, the same price as I later found out I was supposed to pay, advertised in something like the Red Book, or some magazine of that type.

Q. When did you find out you were supposed to pay $89.50?

A. I wrote him a check for $10.00. In the meantime it was getting to be about seven minutes to 11:00, and our classes let out, and students were coming around wanting information. I gave him a check of $10.00, and then he said, "Just a matter of record, I wish you would sign this", and I put my name under it. I thought I better look the thing over, and it was a contract for $89.00, payable, I think, in ten installments of $8.90, or $7.90, over a period of ten years. I would have torn up the contract if it hadn't been for people standing around there at the same time, seeing it all. So I signed that, but I remembered the Standard Dictionary and looked it up, and I realized then I should have known better, it was from the Funk & Wagnalls Company, the Standard Dictionary, and then about three or four days I wrote in a letter, I think I wrote it by hand, cancelling the contract, stating that I herewith

453 cancel the contract because it was a misrepresentation made by their representative. The books were received at the university, together with about 10 or 12 other sets of these ordered by other people, although I had ordered that these be sent to my home. Now, I am not sure whether I sent another coupon—whether I sent another letter or whether

this was in the first letter, for there were two letters written about two days apart, referring to the fact that I had asked the books to be sent to my home, and that when they arrived there were only three packages about this size [indicating] instead of four, although I had never opened the set, and that I was refusing to accept the books. That was in the first letter, I refused to accept the books and asked them to cancel my contract. And besides, I mentioned I had ordered the books sent to my home, which they did not do. I left word at my home if any books arrived not to accept them, and they did arrive within two or three days and they were not accepted, so I have no books, and never had any, and I am out $10.00. Then I got a letter from them in answer to mine, saying they had gone to considerable expense, such as paying the agent's commission, or something like that, $16.00, and express charges, and they were losing about $30.00, and asked me to stick by my contract. I didn't answer the letter. I never answered any other correspondence, because most of them are simply form letters, mimeograph, and I never read mimeograph mail. I have gotten about six or seven from them since I received that communication. In spite of the fact that I signed the
454 contract at one time, I do not see that they have a case against me.

Q. How long after you put your signature to the paper did you discover what that paper really was?

A. That it was a contract; about the time that I had put my name on it.

Q. After or before?

A. After I put my name on it.

Q. Had the representative left?

A. No.

Q. Did you have a conversation with him about it then?

A. Well, he said, "Of course, you didn't expect to get all this extension service for nothing? It costs lots of money to the company." And I simply felt too cheap to recall my check of $10.00 that I had already given him, and with the understanding at that time that it was supposed to be all that I was supposed to pay.

Q. You now understand that $89.00 was for the extension service?

A. Oh, yes.

Q. And you were still to get the books, the fiction, free?

A. Oh, yes.

Q. Did you ever write him any letter concerning the reference works?

A. No, sir; the letter of recommendation. No, I never did; indeed not. I received one shipment of the cumulative extension work, and that was shortly after Roosevelt's

455 death, and the name of Roosevelt was misspelled, I think twice in the article, and, the fact of the Moroccan War, and of Abdul Krim, about two years ago, the facts were not complete there; they were not given by an historian.

Mr. SWEET. That is all.

ROBERT WILLIAM LANGLEY was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. What is your name?

A. Robert William Langley.

Q. Where do you live?

A. 200 South Park Drive, Beverly Hills.

Q. What is your occupation?

A. Physician.

Q. How long have you lived in Beverly Hills?

A. Possibly three years.

Q. Did at any time a representative of the Standard Educational Society call upon you?

A. Yes; two called upon me.

Q. Do you recall their names?

A. I do not.

456 Q. Did they state where the principal had its place of business?

A. Chicago, Illinois.

Q. Will you state substantially the conversation, if any, you had with those men? In the first place, when was that?

A. In June or July of 1923, two representatives called upon me.

Q. Where were you living then, Doctor?

A. Los Angeles. And stated to me that they wished to present me with a set of books that was being put out by the Standard Educational Society, and that they were to make me a present of this set of books provided I would care to look over these books and give them a letter of recommendation if I felt that I cared to. There was to be a charge for loose-leaf service of approximately $89.00. This loose-leaf service was to be extended over a period of approximately ten years, in order to keep the books up to date. In order to compensate for the payment of this service I was to receive in addition to the set of reference books two sets of fiction chosen from a list which they presented me with. I received after three or four weeks the complete set of Standard Reference books, together with a set of Mary Roberts Reinhardt and O. Henry. I made a down payment, I think, of $7.00, and made monthly payments thereafter until the total of $89.00 was paid.

Q. Was any representation made to you as to the offer being a special offer to you and not given to other members of the public?

457 A. Yes; It was my understanding that this was an offer only to myself and names chosen by them from a certain special list, and something which was not extended to the public at that price.

Q. Was any representation made as to the price at which this work was to be offered to the public?

A. It was to be considerably in excess of the amount which I was to pay for service. I do not remember the exact amount.

Q. Did you sign any paper?

A. I did.

Q. Did you know at the time that you signed it what it purported to be?

A. I understood that I was signing an order for an agreement to pay for service charges on these books.

MARGARET E. MARTIN, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. What is your name?

A. Margaret E. Martin.

Q. Where do you live, Mrs. Martin?

A. 3799 South Harvard Boulevard, Los Angeles.

458 Q. How long have you lived there?

A. About 17 years.

Q. What is your occupation or profession?

A. I am secretary to the Los Angeles Museum.

Q. How long have you been employed in that capacity?

A. Ten years.

Q. At any time did a representative or a person representing himself as the agent of the Standard Educational Society of Chicago call on you?

A. Two men called on me.

Q. Do you remember their names?

A. I do not. They introduced themselves, but I do not recall their names, except one of them signed the contract, the letters "P. J. Sullivan."

Q. What representations, if any, did he make as to whom he was representing?

A. He stated that—they stated that they were representing the Standard Educational Society.

Q. And then did you have a further conversation with them?

A. Yes.

Q. Will you state what the substance of that conversation was?

A. They stated that they were—that the Standard Educational Society was putting out a new encyclopedia which they expected and hoped would be as good as the Encyclopedia Britannica. That they, for advertising purposes, had
459 a number of sets to give away, and that they were giving them to prominent people, and had a set for me. I jokingly told them that I was not a prominent person and didn't see why I should have a set, and then they said, "Well, you are secretary of the museum." "Yes." Well, then, I certainly was entitled to a set, and they proceeded to tell me what the set consisted of, ten volumes of the encyclopedia and a ten-year revision service, with five loose-leaf binders to match the set to hold the loose leaves, and research privileges, and also two sets of books that they offered, Eugene Field or Kipling or Stevenson. I took Kipling and Stevenson, by the way, and they said the only charge to me would be a charge for the revision service, which would be $7.90 a year.

Q. A year?

A. Yes; a year. Well, when they mentioned that they would expect a letter of recommendation from me, I objected to that, on the theory that if it was a personal gift to me I would not wish to give them any recommendation except a personal recommendation, and if it was as secretary of the museum, that if it were a gift to the museum then I was not the proper person to give them the recommendation. So they waived the recommendation part of it, but they were still insistent that I should claim my privilege of having a set of the books, and I was interrupted repeatedly during the conversation with them, by other people coming in, and they finally made up the contract and they asked me—
460 I was then talking with somebody else who had been waiting to speak to me for some time—and they asked me if I would pay the $9.00 down, which would leave a $70.00 balance still due, as I understood it, of the yearly revision service.

Q. That is to say, you were to pay $7.90 for ten years?

A. Yes, that was as I understood it, in talking with them. "Well", I said, "yes, I could pay $9.00 down." So I gave them a check for $9.00 and signed the contract, and they were no sooner out of the room, and I had already turned to somebody who was waiting there, when I saw that the contract read $5.00 monthly thereafter. Well, I had signed it. They were on their way and were out of the building, but I felt just foolish enough to let it go. I paid the $5.00 a month for about four or five months, and then considered

it too much trouble to keep on with it that way and I paid the balance.

Q. What representations, if any, were made as to persons contributing articles to this reference work?

A. They mentioned a number of persons, but I could not say who they were.

Q. Did you ever make an investigation whether or not those persons—those books did contain contributions of these persons?

A. I never did. I do not care for the books particularly. I have never been able to find anything in them when I look for it.

Q. Have you ever found any incorrect statements in them?

A. I haven't looked enough in them to know.

461 Q. What representations were made as to the price at which this extension service was being offered to the general public?

A. They stated, I believe, the price was to be in excess of what they were offering it to me for, but I do not know how much.

Q. What representations, if any, were made as to whether or not the offer made to you was being made to one or two, or a limited number of persons?

A. That they stated that they had a limited number of sets to give away.

Mr. SWEET. I think that is all.

Examiner ADDISON. This hearing is hereby adjourned to reconvene at San Francisco, California, on August 19, 1929, at 10:00 a. m., in room 326 of the United States Post Office Building.

462 Docket No. 1574

SAN FRANCISCO, CALIFORNIA, *August 19, 1929.*

Met pursuant to adjournment, 10:00 o'clock a. m.

Before JOHN W. ADDISON, Examiner.

Appearances: Robert H. Winn, by William A. Sweet, for the Commission.

Examiner ADDISON. The hearing will come to order to take further testimony in Commission's Docket No. 1574 in the matter of Standard Education Society. This is in accordance with the particulars of adjournment in Los Angeles on Friday, August 16, 1929.

AUSTIN F. ROGERS, was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Where do you live, Mr. Rogers?

A. Stanford University.

Q. At Palo Alto, California?
A. Yes; Palo Alto.
463 Q. What is your occupation?
A. Professor of mineralogy.
Q. At Leland Standford?
A. Yes; Stanford University.
Q. How long have you lived in Palo Alto?
A. Twenty-four years.
Q. Did at any time a person representing himself to be an agent of the Standard Education Society, of Chicago, call on you?
A. Yes.
Q. About when was that?
A. It was the early part of 1926; I don't remember the date.
Q. Did he tell you his name?
A. Swor.
Q. Did he tell you where the place of business of the society was that he represented?
A. I think he said San Francisco.
Q. Did he mention the Standard Education Society of Chicago?
A. Yes.
Q. And did you understand that the San Francisco office was a branch of that concern?
A. Yes.
Q. What conversation, if any, did you have with him?
A. Well, he represented to me that I could get a set of encyclopedia, a new up-to-date encyclopedia, prac-
464 tically free of charge if I wrote a letter of recommendation.
Q. If you wrote a letter of recommendation after you had examined it?
A. Yes; after I had examined the books.
Q. What, if anything, was said by him as to the usual price of that work to the public?
A. I do not remember that.
Q. What was the price quoted to you?
A. He didn't quote any price at that time.
Q. Was ever a price quoted?
A. Not until the contract was ready to be signed.
Q. So that until you signed the contract you thought you were getting the books absolutely free?
A. He called on me in the morning and he came back in the afternoon and until just before I signed the contract I thought the books would be practically free.
Q. What did you find the price to be to you?
A. Eighty-nine dollars.

Q. Do you recall whether or not any representation was made that the price to the public was greater than that?

A. Yes; I think he mentioned that.

Q. Did he make any representations as to the writers of the articles in that set of encyclopedia?

A. Yes; he said that they were written by experts; that the encyclopedia was new and up to date and the best of its kind.

465 Q. From his conversation did you get the impression that you were receiving a special price, as distinguished from the price to the public?

A. Yes; I certainly did, and the contract is marked in the corner "Publicity."

Q. Did you understand from his conversation that the offer made to you was made to a limited number of persons?

A. Yes.

Q. Had you received any communication from the society prior to that call?

A. No.

Q. I show you a paper headed "Standard Education Society, Educational Publishers", and ask you what that paper is.

A. (Witness examining document.) It is a contract.

Q. Is it the original contract or a copy?

A. It is a copy, yes, a copy of the contract.

Q. And is that a copy of the contract which you signed after you had this conversation with the representative?

A. Yes; it is.

Q. Can you explain why the address on there is Los Angeles instead of San Francisco?

A. No; I can't.

Q. Did you receive the books listed in the copy of that contract?

A. Yes.

Q. Do you know from where the books were shipped to you?

466 A. I have forgotten.

Q. You don't recall whether they were shipped from Chicago or San Francisco?

A. No; I don't recall.

Q. About how long after you signed the contract did you get the books?

A. I don't remember exactly.

Q. Have you examined the books?

A. Yes.

Q. What did you find?

A. They are very unsatisfactory.

Q. In what way?

A. Inaccurate and a good many important things are omitted.

Q. What do you find as to the bindings and quality of the paper as compared with that which was represented to you by the agent?

A. I don't remember just what he said about the quality of the paper.

Q. What do you find as to the writers of the articles?

A. Well they are not articles—the articles are not signed. I find they are not written by experts.

Q. Was any representation made by Mr. Swor as to others who had subscribed or recommended that set of books?

A. Yes; mention was made of President Wilbur and Comptroller Roth, of the university, as having received sets, or going to receive sets.

467 Q. Do you recall whether they were represented to have endorsed or recommended the set?

A. I can't say as to that.

Q. Do you know whether or not those persons have received sets?

A. No; I do not.

Q. Or recommending them?

A. Not as far as I know.

Q. They have not?

A. I am not sure whether they have or not.

Q. Have you ever talked to them about it?

A. No; not with those two gentlemen I mentioned.

Q. Have you received any subsequent correspondence from the Standard Education Society?

A. Yes; a number of communications.

Q. I show you a letter dated February 22, 1926, and ask you if you received that in the usual course of the mail?

A. (Witness examining letter.) Yes.

Mr. SWEET. I offer the letter in evidence. I wish to substitute a copy for the original for the reason that Prof. Rogers has asked that the file be returned to him.

Examiner ADDISON. This copy will be received in evidence with the understanding that a copy may be substituted in lieu of the original and marked "Commission's Exhibit No. 111."

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 111.")

468 By Mr. SWEET:

Q. I show you a letter dated January 18, 1927, and ask if you received that letter in the usual course of the mail.

A. (Witness examining letter.) I did.

Mr. SWEET. I offer that in evidence and ask permission to substitute a copy for the original.

Examiner ADDISON. Received with the understanding that a copy may be substituted in lieu of the original and marked "Commission's Exhibit No. 112."

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 112.")

By Mr. SWEET:

Q. Was it your understanding, Doctor, that at the time you signed the contract for $89.00 that you were to receive the Standard Reference Work and the ten years' Extension Revision Service, or either of them, for that amount of money?

A. Both of them.

Q. Both for that amount of money?

A. Yes.

Q. And that you would receive the sets of fiction listed in this contract free?

A. Yes, sir.

Q. I believe you stated that the price of $89.00 was represented to you as a special price to you and not to the general public?

A. Yes, sir.

469 I call attention to the word "Publicity" marked on the corner there.

Q. How much have you paid on that contract?

A. Fifty dollars.

Q. What has happened between you and the Standard Education Society since you made those payments?

A. They have sent a number of letters to me asking for the payment of the balance of $39.00. I replied to one or two of those letters and since then I have made no reply.

Q. Did you do anything at any time about giving a check for $39.00?

A. How is that?

Q. Did you at any time give a check for $39.00?

A. Yes, sir; I sent in a check and then stopped payment on the check.

Q. For what reason?

A. I found that the books were not satisfactory, and because the books were misrepresented, on account of the misrepresentations made to me by the agent.

Q. And did you so notify the company?

A. I did.

Q. I show you a copy of a letter dated January 31, 1927, and ask you if that is a copy of the letter which you mailed to the Standard Education Society?

A. (Witness examining letter.) It is.

470 Mr. SWEET. I offer it in evidence and ask that a copy be substituted for the original.

Examiner ADDISON. Received and it will be marked "Commission's Exhibit No. 113", with the understanding that it may be copied and the copy substituted for the original.

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 113.")

By Mr. SWEET:

Q. Professor, did you make that copy which is marked "Commission's Exhibit No. 113" yourself?

A. Yes.

Q. I show you a copy of a letter dated May 5, 1927, and ask you if that is a copy of the letter which you sent to the person named therein, an attorney for the Standard Educational Society?

A. (Witness examining letter.) It is.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. Received and will be marked "Commission's Exhibit No. 114."

Mr. SWEET. And request that a copy of that copy be substituted.

Examiner ADDISON. Granted.

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 114.")

By Mr. SWEET:

Q. I show you a letter dated April 27, 1927, and ask
471 you if you received that through the mail.

A. (Witness examining letter.) Yes.

Q. Was the letter of May 5th, which has just been put in evidence as exhibit no. 114, a reply to that letter?

A. Yes.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. Received and it will be marked "Commission's Exhibit No. 115."

Mr. SWEET. And ask that a copy be substituted.

Examiner ADDISON. With the understanding that a copy may be substituted for the original.

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 115.")

By Mr. SWEET:

Q. Are the statements contained in the copies of your letters to the Standard Education Society, and to its attorney, Paul R. Cote, just put in evidence, true statements of facts in the matter?

A. They are.

Q. I will ask Prof. Rogers one more question.

You stated that you found inaccuracies in the Reference Work and that they were not as represented. Will you state in more detail what these inaccuracies are?

A. There are inaccuracies in the articles on minerals,
472 a number of them.

Q. Will you state what they are from your examination?

A. Can I quote them?

Q. Yes.

A. Do you want all of them?

Q. Yes.

A. In volume I, under the article on Asbestos: "Asbestos, a fibrous variety of the mineral amphibole or hornblende. * * *"

Asbestos has never been considered a variety of hornblende by anyone so far as I know.

Volume I, Basalt: "It contains usually but little sand, potash, or soda. * * *"

Basalt never contains sand. The sand here is an error for silica; it should be silica instead of sand.

Volume II, Cinnabar: "It is a red compact, very heavy mineral, composed chiefly of mercury and sulphur."

This statement is misleading as the only constituents are mercury and sulphur.

Volume II, Copper: "Copper is found usually in compound with other elements. In union with carbon it forms a beautiful mineral known as malachite."

This is incorrect. It contains oxygen as well as carbon. The statement given in the article implies that it is a copper carbide.

473 Volume II, Borax: "It is a compound of boron, sodium, and oxygen ($Na_2B_4O_7$)."

Borax is hydrous; it contains ten molecules of water. The formula should be $Na_2B_4O_7.10H_2O$.

Volume II, Carat. The weight of a carat is given as 205 milligrams. Since 1913—the book was written, that is, has a date 1925 on it—the carat is 200 milligrams.

Volume II, Chalcedony: "It is an amorphous variety of quartz. * * *"

Chalcedony is not amorphous. It is micro-crystalline.

Volume III, corundum: Ruby is not mentioned as a variety of corundum.

Volume III, Crystallography: "Though these forms are almost innumerable, they naturally fall into six classes, determined by the relation of their axes."

These six divisions are called "systems" and not "classes."

Volume III, Diamond: "Diamonds occur in the shape of pebbles in beds of gravel. * * *"

Diamonds are always found in the form of crystals, never as rounded pebbles as the article implies.

Volume III, Feldspar: "Several stones used in jewelry are varieties of feldspar, such as the moonstones, lapis lazuli, and the Colorado greenstone."

Lapis lazuli is not a feldspar. For "greenstone" the name "Amazon stone" should be substituted. Green-
474 stone is a rock which has nothing to do with gem varieties of feldspar.

Volume IV, "Hornblende or amphibole." These two minerals are not synonyms as the heading implies. Hornblende is a mineral species under the amphibole group.

Volume IV, "Iddings, Joseph Paxton, 1857–." Dr. Iddings died in 1920. The date of the book is 1925.

Volume V, "Meteorites or aerolites." This statement implies that aerolites are the same as meteorites when, as a matter of fact, they are simply one division of meteorites, or called stone meteorites.

Under the same heading, "The largest meteor known until of late weighed 647 pounds."

The Cape York meteorite, brought to New York in 1895 to 1897, weighed 36½ tons. There are nine other iron meteorites which weighed in excess of 1½ tons. These vary from 27 tons down to 1½ tons each.

Volume VI, Porphyry: "Any compound rock which has a single mineral as a basis in which other minerals are embedded. The basic mineral may be one of a number of rocks—feldspar, jade, and pearlstone are some of them. The embedded minerals are usually quartz, or another kind of feldspar."

This is a very inadequate definition of porphyry. Jade is not found in porphyry, for example. The statement implies that quartz is a feldspar, which is absolutely untrue. The statement also implies that feldspar is a rock, when it is a mineral.

475 Volume VII, Pumice: "Three-fourths of typical pumice consists of fine sand converted into minute powdery particles of glass mixed with alumina, iron, lime, soda", etc.

Pumice does not consist of fine sand. It has not been made by the conversion of powdery particles of glass into a rock, as the statement implies.

Volume VII, Quartz: "Many varieties of pure quartz are colored, as rose quartz, the opal, the amethyst, the smoky quartz", etc.

Opal has never been considered a variety of quartz by any mineralogist.

Under this same heading, "For this reason glass, which is chiefly quartz * * *."

Glass contains no quartz whatever.

Volume VII, Sapphire: "A yellow sapphire is known as a topaz; a green as an emerald; a violet as an amethyst."

These statements are all incorrect. Before the words "topaz", "emerald", and "amethyst", the term "oriental" should be prefixed. The statement as it stands is absolutely incorrect and misleading to any except a professional mineralogist who knows what these terms are.

Volume VII, Silicon: "A number of stones favorites, more or less with the jeweler, as opal, agate, amethyst, carnelian, onyx, flint, chalcedony, and rock crystal are composed chiefly of silicon."

476–477 This statement is incorrect. These minerals are composed of silica, which is an oxide of silicon, and not the element silicon itself.

Volume VIII, Water: "It is a constituent of nearly all minerals even to the hardest stone, and of all vegetable and animal tissues."

The first part of this statement is incorrect. Many minerals do not contain any water at all. They are absolutely anhydrous.

Mr. SWEET. I want to offer the copy of the contract testified to by this witness in evidence and I request that a copy be substituted for it later on.

Examiner ADDISON. It will be received and marked "Commission's Exhibit No. 116" with the understanding that a copy may be substituted in lieu of this copy.

(The contract referred to was thereupon received in evidence and marked "Commission's Exhibit No. 116.")

Mr. SWEET. That is all.

(Witness excused.)

BUFORD O. BROWN was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Where do you reside, Professor?

478 A. Stanford University.

Q. Palto Alto, California?

A. Yes.

Q. And what is your connection with Stanford University?

A. Professor of journalism.

Q. How long have you lived in Palo Alto?

A. Since 1923.

Q. Did at any time a person representing himself to be an agent of the Standard Education Society, of Chicago, call on you?

A. He did.

Q. About when was that, do you recall?
A. In the spring of 1926.
Q. Did he tell you his name?
A. Swor.
Q. Did he state where his employer, or the concern he represented, had its office or place of business?
A. In Los Angeles at that time.
Q. What conversation, if any, did you have with him? State the substance of it as near as you can.
A. With regard to the Standard Reference Work, he said the company wanted to give a limited number of sets, books, to men who could write recommendations for the books after they had examined them. He went considerably into detail as to the type of the books they were putting out. He showed me a prospectus.
479 Q. What did that prospectus show?
A. The binding and a few pages running through the book.
Q. Was any representation made as to the predecessor of the Standard Education Society in issuing this reference work?
A. Yes; he represented—I couldn't be certain that he stated in definite terms that the Standard Education Society is a successor to Dodd, Mead & Company, but he left the impression very definitely that the Standard Reference Work was a successor to the New International Encyclopedia?
Q. New International Encyclopedia?
A. Yes, sir. That is a Dodd, Mead publication.
Q. A Dodd, Mead publication?
A. Yes.
Q. Were any representations made as to the selling price to the general public of this reference work?
A. Yes. He didn't give me the definite figure, but he stated that it would be very much higher than the nominal charge they would have to make to me for the service they furnished, the books and the ten-year service.
Q. What was the nominal charge to you?
A. Eighty-nine dollars.
Q. Just what did you understand that that included?
A. A set of books, ten years' service in keeping the books up-to-date, loose-leaf service, and three sets of fiction.
Q. Were any representations made as to the char-
480 acter of the writers of the articles in this reference work?
A. Yes; that they would be authorities in their representative respective fields. I questioned him on that point rather carefully because I have always been partial to the New International Encyclopedia and I was impressed with

the suggestion that this book was a successor, and in fact, to the New International.

Q. Have you since ascertained whether that is a fact?

A. That it is a successor?

Q. Yes.

A. No; I have not. My impression is that it is not, but it is merely an impression.

Q. Were any representations made as to other persons who had subscribed for or recommended this work?

A. Yes.

Q. What were those representations?

A. He showed me a list which purported to be the men who had taken the books, or who had been given the books on the same terms he wanted to give them to me on.

Q. Did you ever attempt to verify that?

A. As to whether they got the books?

Q. Yes.

A. In some cases; yes. I didn't go to all the names, of course.

Q. Did you find any misrepresentation in that?

A. No—as to the names he had represented there—no.

Q. Did he represent to you that Dr. Wilbur, or
481 Comptroller Roth, or Dean Culver, had subscribed for these books?

A. Dean Kirkwood, of the Law School, among the others you mentioned, yes.

Q. But you say you never ascertained whether they have or not?

A. No.

Q. Did you understand that any of these books, that is referring to either the Standard Reference Works or the sets of fiction, would be given free to you and that you were paying $89.00 for the service, extension service? Was that your understanding, as I gather from your testimony?

A. Yes. He made the statement that, of course, they would have to make a charge for the extension service. I paid very little attention to it because I assumed that the $89.00 was a charge which I was entirely willing to pay if the books were as he represented them.

Q. And relying on his representations you signed a contract?

A. Yes.

Q. For $89.00?

A. Yes.

Q. And how much have you paid on that?

A. Twenty dollars.

Q. Twenty dollars?

A. Yes.

Q. Were the books shipped to you?

A. They were.

482 Q. Do you know from where they came?

A. I do not. I was not at home at the time the books came.

Q. Have you examined the books?

A. I have.

Q. What do you find as to the truth or falsity of the statement as to the bindings and quality?

A. I cannot qualify as an expert as regards bindings. The books, in appearance, were disappointing. The term "De luxe" is a relative term, or rather a term used in printing in a somewhat different designation to what we think of it. I certainly wouldn't classify the books as de luxe and yet it might get by under that classification.

Q. Are you able to state whether or not the books measure up to the representation in the prospectus, in your opinion?

A. No.

Q. No?

A. No.

Q. What have you found as to the writers of the articles in that reference work?

A. I have in mind only one, because I returned my books some two and one-half years ago, as soon as I returned home and found them. In volume VII there was a statement to the effect that Stanford University has more than 100 professors and that professional schools have not been established. The schools of medicine and law have been established for a good many years—doubtless I should

483 be exact—ten at least. Degrees in engineering have been given for more than ten years. The school of engineering, with a dean at its head, was established about four years ago. The faculty, at the time the Standard Reference Work was written in 1925, numbered more than 300.

Q. From that what conclusion did you come to as to whether or not the reference work was up-to-date as represented by this agent?

A. That certainly it was not.

Q. Have you had any communication or conversation with any other representative of the Standard Education Society than Mr. Swor?

A. I have.

Q. When was that conversation had?

A. It must have been in 1927. I am not sure as to the date.

Q. Do you recall with whom?

A. A gentleman who represented himself as the brother of Mr.—no, Olson, as I remember his name, E. V.

Q. You started to say a brother of Mr. E. V. Olson. Was it E. V. or his brother?

A. A brother of Mr. O'Brien, or a brother-in-law.

Q. And had you had some communication with Mr. O'Brien?

A. Yes.

Q. What position does he hold with the company, if you know?

A. The letter is written as manager of the San Francisco office.

Q. Will you state in substance what that conversation was.

A. With Mr. Olson?

484 Q. Yes.

A. He came down to Stanford, he said, to see if he couldn't straighten the matter out. He offered to let me keep the sets of Kipling and Stevenson—I had returned the Standard Reference Work and the set of de Maupassant—on an additional payment of $20.00.

Q. What did you do with reference to that offer?

A. I declined. He also said that Mr. Swor had made so many misstatements that they had had to get rid of him.

Q. You have declined, then, to make any further payments on the contract?

A. Yes.

Q. And for what reason?

A. I consider that the company had voided it, failed to live up to their representations, and I returned the books.

Mr. SWEET. That is all.

(Witness excused.)

P. E. DAVIDSON was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Where do you live?

A. Menlo Park.

Q. California?

485 A. California.

Q. And what is your occupation?

A. I am a teacher at Stanford University.

Q. And how long have you been so engaged?

A. Since 1907.

Q. Did at any time an agent of the Standard Education Society call on you?

A. Yes.

Q. Can you state when that was?

A. Well, I would say about three years ago.

Q. In 1926?

A. I imagine about that.

Q. Did he state his name?

A. He did but I do not recall it.

Q. Do you know whether or not he was the same person who called upon other——

A. (Interrupting.) I am quite sure he was. He told me he had distributed a number, had taken a certain number of orders that morning.

Q. (Continuing.) To finish my question—do you know whether or not he was the same person that called on Prof. Rogers?

A. I don't know.

Q. And Prof. Brown?

A. I don't know; but I assume he was.

Q. Do you recall whether he mentioned their names?

486 A. I do not recall.

Q. What conversation, if any, did you have with him?

A. He explained that he had given away a number of sets of encyclopedia that morning and that he had one more set to offer and that I was to be the recipient of that if I cared to take it. He explained that he was particularly interested in having a criticism of the book; that was the principal consideration in return for the set. It appeared later that there was a money charge which was to cover the service, ten-year service, and I think that was the excuse he gave for the money charge. However, there were three sets of books that were to go with the encyclopedia.

Q. Three sets of fiction?

A. Three sets of fiction. These books were to be in de luxe bindings and the encyclopedia was represented as a scholarly, modern book, plates for which had been purchased from a publishing house whose name was given, and which I immediately recognized as a reputable concern. In fact, I was quite impressed by the statement that the books had been had from this concern because I had confidence that that company would not put out anything but excellent books.

Q. What was the name of that concern?

A. I don't recall; I can't recall now but, as I say, it was a well-known publishing house and it immediately impressed itself upon my attention as reputable.

487 Q. About how long after that call was it until you received the books?

A. Well, I should say a week or ten days, perhaps.

Q. Did you notice from where they were shipped to you?

A. I think they came from Los Angeles. I am quite sure they did.

Q. At some later time did you know whether or not the office of the Standard Education Society, branch office, was moved from Los Angeles to San Francisco?

A. Well, yes, I heard something of that later, but I cannot recall where I got the knowledge.

Q. After you received the books did you write to the concern?

A. Yes; I wrote immediately to Los Angeles to say that I thought that I had been taken in by the transaction and asked what they would have to say about the matter in view of my feeling.

Q. Had you then examined the books?

A. Yes.

Q. What did you find as to their being a modern and up-to-date set?

A. As soon as I opened the package I realized that the books were trashy and quite different from what they had been represented to me to be.

Q. You are referring to the Reference Work?

A. Both.

Q. What did you find particularly as to the up-to-dateness of the Reference Work?

488 A. The Reference book was obviously a book of scissors and paste pot; the articles were brief and inadequate. And the few that I knew of were distinctly inadequate.

Q. Could you specify what those few were?

A. In my work, public education, and I reviewed the articles on that subject.

Q. From reading those articles what would you say as to the qualifications of the writers?

A. Well, obviously they were not written by experts, or anybody that is acquainted with the subject in a direct fashion.

Mr. SWEET. I think that is all.

(Witness excused.)

J. DE MENZES was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Will you state your name?

A. J. de Menzes.

Q. And where do you live?

A. Oakland.

Q. California?

A. Yes.

Q. What is your business?

A. Publisher.

489 Q. How long have you lived in Oakland?

A. About 32 years.

Q. About 32 years?

A. Yes.

Q. At any time did a person representing himself to be an agent of the Standard Education Society, of Chicago, call on you?

A. Yes, sir; after I had received a letter; a few hours after I received a letter from the office this gentleman called.

Q. I show you a letter dated December 15, 1927, and ask you if that is the letter you received.

A. (Witness examining letter.) Yes.

Mr. SWEET. I offer it in evidence.

Examiner Addison. Received and will be marked "Commission's Exhibit No. 117."

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 117.")

By Mr. SWEET:

Q. And shortly after you received that letter you say this gentleman called on you?

A. Yes, sir.

Q. Did he state his name?

A. I believe he did, but I do not remember.

Q. Did he say where the Standard Education Society's place of business was?

A. Yes, sir. He asked me if I had received a letter
490 and I said that I received the letter this morning, and the office was in the Pacific Building.

Q. San Francisco?

A. San Francisco.

Q. What conversation did you have with him at that time-

A. He showed me several letters of recommendation and one of them, I am sure, was from Mayor Rolph, and some others, but I didn't know them. He said they wanted my endorsement. I said that I was looking for an encyclopedia; that I had investigated several and that I would like to have one that was up-to-date. He said, "This is up to 1927." I said, "I am looking for some matter about the discoverer of California, John Rodriques Cabrillo."

Q. Go on.

A. He said that I would be well satisfied. He said that in a few days I would receive the books. When I received the books, and opened them up, the first thing I looked for was for what I knew and I looked for Cabrillo and couldn't find him.

Then I looked for the Azores Islands, where I came from, and it was very poor. And other matters that I looked up, it was very, very poor, and I wrote to them to say that I couldn't give an endorsement; that my endorsement would be of little good to them, and I returned the books to them. They never took them from the express office, as I found out several days afterwards, and as I thought they

491 would leave them there and have me pay for them there I asked the express company to bring them back, which they did, and I have never opened them. I have them there, all the books, I never opened them.

I received a few letters from them. A short while afterward I went to the Better Business Bureau and they said that if I received any threatening letters to send them to them. The first letter I opened, I sent it to them, and I wrote them that all correspondence on that subject should be done with the Better Business Bureau, so and so, and where it was, in the Tribune Tower, Oakland. I think I sent another one to the Better Business Bureau and then they never bothered me any more.

Q. Did you state to the representative, during your conversation with him, that you were interested in the Azores Islands?

A. That I was interested in Cabrillo.

Q. Did he say anything about what you would find there.

A. No; he didn't say anything.

Q. But he did represent that this work was up-to-date?

A. First-class, up-to-date; yes.

Q. Have you ever examined it?

A. Just a few subjects that I knew about and when I saw that was wrong I knew I couldn't trust anything; so I returned the books right away.

Q. As a publisher, what do you say as to the quality of the books?

A. As to the material and workmanship?

Q. Yes.

492 A. I didn't pay much attention to that. I only thought it was offered to me for a review and that wasn't that.

Q. What price was made for it to you?

A. Seven dollars fifty cents a month for a year.

Q. And what representations were made, if any, as to what that $7.50 paid for?

A. It was for the future loose leafs.

Q. And for your endorsement, if you could give one, you were to receive——

A. (Interrupting.) The books free.

Q. Were you to receive any other books—fiction?

A. A set of Kipling, and the other, I think, was Louis Stevenson, ten volumes of each.

Q. Was there any representation made by this person as to the usual selling price to others than you?

A. I don't remember. I only had the understanding that it was a special favor to me, and privilege, and I took it as, being a newspaper man, I had use for books like that.

Q. Did you ever write to the Standard Education Society in regard to the Reference Work and the articles contained in it?

A. Yes, sir.

Q. I show you a copy of a letter dated December 21, 1927, and ask you if that is a copy of a letter that you wrote to the Society?

A. (Witness examining letter.) Yes.

493 Q. The statements in that letter as to facts are true?

A. Yes; surely.

Mr. SWEET. I offer it in evidence.

Examiner ADDISON. Received and will be marked "Commission's Exhibit No. 118."

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 118.")

By Mr. SWEET:

Q. I show you a copy of a letter dated January 12, 1928, and ask you if that is a copy of the letter you wrote to the Standard Education Society.

A. (Witness examining letter.) Yes; because I thought that maybe the books were in the express office, and I would have to pay for the storage, and I went right away for them.

Mr. SWEET. I offer that in evidence.

Examiner ADDISON. Received and will be marked "Commission's Exhibit No. 119."

(The letter referred to was thereupon received in evidence and marked "Commission's Exhibit No. 119.")

Mr. SWEET. That is all.

(Witness excused.)

Examiner ADDISON. The hearing is hereby adjourned to reconvene on August 22, 1929, 10:00 a. m., in the post-office building, at Portland, Oregon.

(Whereupon the hearing adjourned at 11:20 a. m.)

494 Docket No. 1574

PORTLAND, OREGON, *August 22, 1929.*

Met pursuant to adjournment, 10:00 a. m.

Before JOHN W. ADDISON, Examiner.

Appearances: W. A. Sweet, for the Commission. No appearance for the respondent.

Examiner ADDISON. The hearing will come to order to take further testimony in Commission's Docket No. 1574, in the matter of the Standard Education Society. This is a continuation of a series of hearings, the last of which was held in San Francisco on the 19th of August 1929.

LUCY STAPLES WILBUR, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Will you state your name?
A. Lucy Staples Wilbur.
Q. Where do you live, Mrs. Wilbur?
A. Leaburg, Oregon, right now.
Q. How long have you lived there?
A. Since July 10th.
Q. This year?
495 A. Yes.
Q. Where did you live prior to that time?
A. McMinnville, Oregon.
Q. And how long had you lived there?
A. Where? In McMinnville?
Q. Yes.
A. Since about June 1st.
Q. What was your occupation when you lived in McMinnville?
A. I was a waitress in my sister's tea room.
Q. You have since been married?
A. Yes.
Q. And your name then was Miss Lucy Staples?
A. Yes.
Q. Do you remember whether or not at any time a representative of the Standard Educational Society of Chicago called on you?
A. Not of Chicago; of San Francisco.
Q. Did he state his name?
A. McNamaro; J. C. his initials are, I think; and he had somebody with him.
Q. When did he call on you, if you can remember?
A. About around June 19th. I think it was June 19th, to be exact.
Q. You say he had somebody with him?
A. Yes, sir.
Q. Did they state to you whom they represented?
A. Yes; the Standard Education Society.
496 Q. Did they state where the office of the company was located?
A. San Francisco.
Q. Did you have a conversation with them about some books?
A. Yes.
Q. Will you state what that conversation was substantially, as near as you can remember?
A. They started out by saying that they were representing the Standard Education Society, which put out a set of books

that had been endorsed by several well-known men. At the time I didn't ask who they were. He said they could easily show who they were. He said there were men of the University of Oregon, and named some names that I don't remember, and I didn't recognize the names of any educators that I knew. They said they were going about to people who they thought—in the first place, they said that instead of advertising through the magazines, which cost a great lot and didn't do very much good, they were going to people that they thought could do them some good by telling about their books and giving them a set of books in return. They expected a letter within a year telling the good of the book and how wonderful it was, and so forth, and I understood that that was just about practically all. They were going to teachers especially, because they were supposed to know what they were doing, so that these teachers could—well, their word would be taken, since they were teachers.

Q. Did you understand what the set of books consisted of? That is, was it a set of books published already and an
497 extension service which kept them up to date?

A. Yes.

Q. How many volumes of the published books were there?

A. I believe there were ten.

Q. Was there any representation made as to whether or not you were being offered this set of books and extension service as a special favor and as a favor that was not granted to the public generally?

A. Yes.

Q. And what did you understand about whether or not you were to pay for the books?

A. I understood that I was getting the books free and that I was going to pay a small amount for the loose-leaf set that I would get; I think it was to be sent quarterly. I suppose that means four times a year.

Q. Over a period of how many years; do you remember?

A. Ten years.

Q. And what was the price that you were to pay for that?

A. $69.50. He didn't say sixty-nine fifty; he said $5.00 a month to make it sound small.

Q. Five dollars a month over a period of ten years?

A. No; it would not take ten years to pay that, would it?

Q. Oh, no. I mean to say——

A. For the loose-leaf books?

Q. The loose-leaf service was to be delivered over a
498 period of ten years?

A. Yes.

Q. But you were to pay whatever amount they charged at five dollars a month?

A. Yes.
Q. Until $69.50 was paid?
A. Yes.
Q. Was any offer of other books made to you at the time; that is, books of fiction?
A. No.
Q. Was any representation made that only a limited number of persons in the community was to receive the offer that was being made to you?
A. Yes; in the State—just a few people in the State.
Q. Had you been a teacher?
A. Not yet. When they offered the contract I had just graduated from normal school.
Q. I see; but you had been preparing to become a teacher?
A. Yes.
Q. Was any representation made as to the usual selling price of the extension service to the public? That is to say, were you getting the extension service at a less price than they were going to offer it to others?
A. Yes. We were privileged.
Q. Did they say how much they were going to offer it to others for?
499 A. No; they didn't—not that I remember, anyway.
Q. But did they say anything about whether it was greater or less than what you were paying?
A. Oh, yes. They said that people were paying a great deal more than what I would be expected to pay.
Q. Had you, previous to the call upon you by these men, received any letters from the Standard Education Society?
A. No; not that I remember of, at least.
Q. Have you received any communications from it since?
A. Yes.
Q. Where did they come from, do you recall?
A. San Francisco.
Q. Were the books ever shipped to you?
A. Yes.
Q. Do you recall where they came from?
A. I believe they came from San Francisco. I am not sure, though, I didn't look at that.
Q. Have you still got the books?
A. No. I sent them back.
Q. Where did you send them?
A. I sent them to San Francisco, to the San Francisco office. I sent them c. o. d.
Q. Did you examine the books at all?
A. Yes.
Q. What did you find as to their measuring up to the representations made concerning their contents and
500 the contributors of the articles in those books?

A. I didn't find any places where it was signed by well-known educators of today, like the World Books are. In the World Books they have places where several educators have signed. These books did not. And they had the usual things that every encyclopedia has and nothing more. They were just nothing extra—not as good as any other book like the World Book. The binding wasn't at all good like you would expect for the price. And I remember especially that I thought the pictures looked a little bit out of date. One place where it was telling about school conditions there it showed the dress of a child in puff sleeves and a bow behind, and my mother said it was 1900 stuff.

Q. Did you notice any other subjects referred to in that book which apparently were not up to date, as you knew it?

A. Well, I don't remember. I am afraid I wasn't very careful to remember that.

Q. But you did notice that some of the illustrations were of a period long prior to the time that you got the book?

A. Especially that one. I don't recall any other, but that one did.

Mr. SWEET. I think that is all, Mrs. Wilbur.

(Witness excused.)

ELSIE ANDERSON, was thereupon called as a witness, and, having been duly sworn, testified as follows:

501 Direct examination by Mr. SWEET:

Q. Will you state your name.

A. Elsie Anderson.

Q. Where do you live, Miss Anderson?

A. Portland, Oregon; 760 Commercial Street.

Q. How long have you lived there?

A. Seven years.

Q. What is your occupation?

A. Teacher.

Q. How long have you been a teacher?

A. This last year; one year.

Q. Did at any time a representative of the Standard Education Society call on you?

A. Yes.

Q. About when was that?

A. June 1928. I believe it was about June 19th. That is the date, as I recall.

Q. Was he alone?

A. No. He was with another salesman. The way I gathered it, one took one person and then the next house the other one took.

Q. Did he tell you his name?

A. Yes; he did. In fact, they introduced one another very courteously.

Q. Do you remember what it was?

502 A. No; I just can't remember it.

Q. Did he tell you whom he represented?

A. Oh, yes.

Q. Did he state where the office of the company was?

A. Well, the home office was in Chicago, Illinois, and there was a branch office in San Francisco, but we were dealing with the San Francisco branch, as I understood.

Q. What other conversation did you have with him?

A. Of course, naturally, we had quite a conversation before we bought the books. He told us that we were getting the set of books as a gift and that we were a certain few out of the State who were given this offer, and the reason they were giving us this offer was that they thought it would be better to give away books than to put their money into other advertising purposes or means, and they thought by giving us a set of books they would use us as an advertising means, you see.

Q. Did they ask you to examine the books and later recommend them, if possible?

A. Oh, they told us right then that within a year we were to write to them. They took it for granted that we would like the books; that when we got the books, within a year we should write to the company a letter recommending the books.

Q. What did the books consist of?

A. They were ten volumes, really consisting of everything. There was one particularly on education and one on science. There were ten volumes, just about everything.

503 Q. I mean there were ten volumes of printed books, and then what else was there went with them?

A. Then we were to get a loose-leaf extension that was to come out for ten years every three months, four times a year, and we were paying for this extension and not for the books. The books were given to us. They told us we were getting something. Well, we thought if we were getting something we might as well get it. And the first thing we knew we were to pay for something else, not the books.

Q. How much were you to pay for the extension service?

A. I believe it was $69.50, to be exact.

Q. $69.50 was the price that you were to pay?

A. Yes.

Q. And in monthly installments?

A. He told us since our schools had not started yet we would not have to begin paying until October, and we were to pay in monthly installments of $5.00 until we paid up.

That would take over a year to pay for them, fourteen months. There was no payment down at all.

Q. Was there any representation made by the salesmen as to the usual selling price to the general public of this extension service?

A. Yes. He said if we had not received this special offer we would have had to pay more for the books. You see, we were getting the books free, and we were paying the regular price for the extension but other people were paying the regular price for the extension plus this price for the books; and I am not sure, but I believe he said about ninety-eight dollars the whole set cost. So we thought of course that we were getting a special offer, of course.

504

Q. Have you examined the books?

A. Oh, yes. When I first got them I was disappointed because I could tell. Pages were not numbered and some of the pages were not cut; you know, they were stuck together; and I had looked at other encyclopedias. I have seen the World Book, and Compton's Pictured Encyclopedia, and could tell a good encyclopedia from looking at it, and it didn't seem to be up to standard.

Q. What did you find, if anything, about the articles in the books as to whether they were contributed by persons as represented by the salesmen?

A. Now, I didn't recognize any well-known educator's name. Now of course there were a lot I would not have heard of; at the same time we, when teaching, hear of them usually, and there were none that I was familiar with at all.

Q. What representations, if any, were made by the salesman as to whether or not the reference work of ten volumes was up to date?

A. Oh, yes. He told us they were up to date, and he said that was their method of keeping their volumes up to date; all the recent material was to be compiled, you see, and in that way for ten years you would be getting recent material.

Q. What, if anything, have you found as to the accuracy of that representation?

505

A. Well, there was one—you see, they sent with the books——

Q. No; I am speaking now about whether or not you found that the books themselves were or were not up to date.

A. Oh, no; the books were not. This same picture Miss Staples spoke about I noticed right away. The illustrations were about 1905 and 1910. Really, they were just very out of date. The first thing you noticed, you know, the pictures attracted your attention. They were way out of date.

Mr. SWEET. I think that is all, Miss Anderson.

(Witness excused.)

RUTH S. FREDRICKS, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. State your name.
A. Mrs. Ruth S. Fredricks.
Q. What is your address?
A. 1220 North Union Avenue, Portland, Oregon.
Q. Mrs. Fredricks, are you a sister of Mrs. Wilbur, who has just testified?
A. Yes, sir.
Q. Did you examine the books that Mrs. Wilbur received from the Standard Education Society?
506 A. I did look through them.
Q. How carefully?
A. Well, I looked through them a good deal more than she did. I read quite a little in them. I could not tell you exactly anything I read in them, but I know that it had been published for some time because it wasn't new material.
Q. And what did you find as to the quality of the reference books, as to the binding and the printing?
A. I thought that they were of very poor quality, both in the paper and the binding. They were poorly put together.
Q. Can you state whether or not you examined any illustrations in the books?
A. I did. All the illustrations were old; and I noticed that the pictures of women and even automobiles were old illustrations.
Q. Did you notice anything else about them that you recall?
A. That is all I noticed, but I didn't think they were at all up to date. The material and the illustrations and everything were behind the times.
Mr. SWEET. That is all. Thank you.
(Witness excused.)

MARIE ECKLES, was thereupon called as a witness, and having been duly sworn, testified as follows:

507 Direct examination by Mr. SWEET:

Q. Your name is Miss Marie Eckles?
A. Yes.
Q. Where do you live?
A. 192 Fremont.
Q. Portland?
A. Portland, Oregon.
Q. How long have you lived there?
A. I have lived there about a year.
Q. And where did you live prior to that?
A. 604 Albina Avenue.

Q. At any time did a representative or agent of the Standard Education Society call on you?

A. Well, not at my house. I was up to Miss Anderson's when they called.

Q. About when was that?

A. June 19th, 1928.

Q. And Miss Anderson is the same person who has testified in this case?

A. Yes, sir.

Q. Did you have a conversation with those salesmen?

A. Yes; both of us together. They stated—of course, we wanted to find out about the books, you see, when they represented them to us, and he was stating, and also showed us, some names of some professors and teachers that
508 had a set of books, but I don't remember them all.

And of course he stated about the books being $69.50, and that we were getting the offer of the set of books free but we were paying for the loose-leaf extension we were supposed to be getting.

Q. And the set of books contained ten volumes?

A. Ten volumes; yes.

Q. Did he state where these professors were located you refer to?

A. I believe he did at the time, but I don't remember; some place in schools of Oregon.

Q. Did he state where the place of business or headquarters of his concern was located?

A. San Francisco. But the main office I believe was at Chicago, Illinois.

Q. How much were you to pay for the extension service?

A. $69.50.

Q. Was any representation made as to the price of that extension service to the other members of the public?

A. Well, it seems to me at the time he did say something about it, as to this being a special offer; and he might have stated the price that the public would have had to pay but I can't remember that.

Q. Well, do you recall whether it was more or less than you were paying?

A. Naturally it would be more, I suppose.

Q. Did he state whether or not the offer which he was making to you was made to a limited number of persons?

509 A. Yes, he did.

Q. And what did he state as to that?

A. I believe he said forty. I believe that was it. I am not sure, but it was a limited number.

Q. And did he state where those forty people were located?

A. Well, all around Oregon.

Q. I see; forty people in the State of Oregon were receiving this offer?

A. That is what I believe he said, forty. Anyway, it was a limited number.

Q. Did he make any representations as to whether the reference work was up-to-date or not?

A. The books themselves, he did I believe say that—that the books were up-to-date.

Q. And when was the extension service to begin?

A. Well, it should have began when we got the books, one copy of it, and then I believe every three months from then on.

Q. Was any request made of you to recommend the reference work?

A. Yes; there was.

Q. Was anything said as to why this offer was being made to you as it was being made?

A. They said that on account of advertisement, and instead of publishing an advertisement through magazines and the like, that it was cheaper for them to go around and get personal recommendations and send them to the office.

510 Q. Did you receive the books?

A. I received the books, yes.

Q. Do you know where they came from?

A. San Francisco.

Q. Did you examine them?

A. Yes; I examined them. Well, I examined one book, because I looked at Miss Anderson's book. She had all of hers out and I happened to be at her place, and when I received my books naturally they were the same set of books and I took one book out, the same one out, and it was the one connected with the teachers. That was the whole aim for which I was getting the books. And I looked at the book and it wasn't up to the standard of what they said it was, and the pages were of poor quality, the binding wasn't good, and even some of the pages were not cut apart.

Q. And what did you find as to the article on teachers as to its up-to-dateness?

A. Well, it was not. It wasn't up-to-date and according to proofs of other books and some of the educators of Oregon. They were not signed by any. So it wasn't up to the standard at all of what I expected.

Q. Did you, Miss Eckles, relying on what these salesmen represented, order the extension service and agree to pay any price for it?

A. Yes; $69.50; and I was supposed to pay $5.00 a month, beginning October.

511 Q. And you were to receive the books free?

A. The set of books themselves were free, supposedly, and we were paying for the loose leaf.

Q. Did you pay anything on account of that agreement?

A. No; I didn't pay anything.

Q. What did you do with the books, if anything?

A. I sent them back to San Francisco.

Q. Did you write them a letter with the books, or anything?

A. Yes; I wrote them a letter stating that I didn't care for the books and I was returning the books to them.

Q. Did you state any reason why you didn't care for them?

A. Well, yes. I told them that they were not up to what the salesman had represented and had talked to us about them. I told them about that.

Mr. SWEET. I think that is all.

(Witness excused.)

Mr. SWEET. I will recall Miss Anderson for a couple of questions.

ELSIE ANDERSON was recalled, and, having been previously sworn, testified as follows:

Direct examination by Mr. SWEET:

Q. Miss Anderson, relying on what the salesman of the Standard Education Society said to you regarding the
512 set of books and loose-leaf service, did you agree to purchase the loose-leaf service?

A. Oh, yes. That is what we were paying for, but not for the books. We were paying $69.50 for ten years of this service.

Q. Did you sign any agreement to that effect?

A. Oh, yes. There was a little contract, a little blue one.

Q. And did you pay anything on account of the contract?

A. Not a thing.

Q. What have you done with the books?

A. I sent them back to San Francisco.

Q. Did you write a letter?

A. Yes; I wrote to them. And I also told them that I was writing to the Federal Trade Commission. I told them that.

Q. What reasons did you give them for not retaining the books and the loose-leaf service?

A. I don't remember just how I worded it, but anyway I told them the books were not as represented, they were not up to date, and the pages were not numbered, the binding wasn't good, and so forth.

Q. Was any offer other than the set of books and loose-leaf service made to you by this salesman?

A. No; there wasn't any other offer.

Q. Were you supposed to get anything else?

A. Yes. Besides the extension, we were getting a research bureau privilege. For instance, he told us if we wanted to get some information on, say, aviation, all we had to
513 do was to write back there to this research bureau and they would look up all the material for us and save us the trouble of getting it, and we would get just as much as if we looked through all the encyclopedias and everything, and we were just getting that. This research bureau was in Chicago.

Q. But it was connected with the extension service?

A. Yes. But I didn't pay anything extra for that, and that also was stated in the contract along with the rest.

Mr. SWEET. That is all. Thank you.

(Witness excused.)

Exam. ADDISON. Let the record show that at 10:50 a. m. we adjourned this hearing, to be reconvened on five days' notice from the examiner.

(At 10:50 o'clock a. m., Thursday, August 22nd, 1929, the hearing was adjourned, to be reconvened on five days' notice from the examiner.)

514 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, ET AL.

ROOM 2702, FEDERAL TRADE COMMISSION BUILDING,
*Washington, D. C., Saturday, November 2nd, 1929.*

Met pursuant to adjourment heretofore noted at 10 o'clock a. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn, Esq., for the Federal Trade Commission. No appearance for the respondents.

515 PROCEEDINGS

Examiner AVERILL. Are you ready, Mr. Winn?

Mr. WINN. Yes, sir; we are ready to proceed.

I might say here for the purpose of the record that the attorneys for the respondents have been notified of this hearing, and have approved the setting of the same, in a telegram received by the Commission, but will not enter their appearance for the hearing.

Examiner AVERILL. Call your first witness.

EDWARD A. PACE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. You will give your name, please?

A. Edward A. Pace.

Q. And you reside where?

A. Washington, D. C., Catholic University.

Q. And what is your position, Dr. Pace?

A. Vice rector of the university; professor of philosophy.

Q. And how long have you been connected with the Catholic University?

A. Thirty-eight years.

Q. And prior to the office which you now hold, that is, vice rector, what office did you hold in the university?

516 A. I was for some years what they call director of studies.

Q. Were you at one time, Dr. Pace, general secretary of the Catholic University of America?

A. Yes.

Q. Are you also one of the editors of the Catholic Encyclopedia?

A. Yes.

Q. How many editors does that encyclopedia have, sir?

A. Five.

Q. To the best of your recollection did you ever contribute an article or articles for the Standard Reference Work published by the Standard Education Society of Chicago?

A. To the best of my recollection, I did not.

Q. To the best of your recollection did you ever review any articles for this same publication?

A. On that point I am not so sure. I have a vague recollection of having gone over, let us say, proofs of articles concerning the Catholic University. And I may have met parties representing this work, but I do not find any correspondence on the subject in my files.

There have been a good many occasions on which people come in and say, "Well, now, we are going to put this in our publication. Will you look over it and O. K. it or correct it", or whatever it is. And that may be a matter simply of fifteen minutes. I would not call that my contribution. I may have revised it, or I may have sug-

517 gested for this edition or the other. That happens frequently enough and I take no note of it.

Q. You say, though, that may have happened in this case or may not, you are not stating that as a fact that that did happen. You say it may have happened.

A. No; it may have happened.

Q. Did you ever authorize, to the best of your recollection, the use of your name as a contributor and reviewer in connection with this work?

A. No.

Q. To the best of your recollection did you ever receive any remuneration of any kind in connection with any work that you have or may have done for this organization?

A. I am sure on that point; no.

Mr. WINN. I think those are all the questions I have for you, doctor.

(Witness excused.)

Dr. FRANK W. BALLOU, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your name, please?

A. Frank W. Ballou.

Q. And you reside in Washington?

518 A. Yes, sir.

Q. And what is your occupation?

A. I am superintendent of schools in the District of Columbia.

Q. Prior to the time that you were superintendent of schools in the District of Columbia what positions did you hold?

A. I was assistant superintendent of schools in Boston from 1915 to 1920. Immediately preceding that time I was a graduate student at Harvard University, and for a part of the time a member of the faculty of the division of education. Preceding my studies and work at Harvard I was assistant professor of education at the University of Cincinnati.

May I just correct that statement? I was not superintendent of schools from 1915—I mean 1915 to 1920—because the first three years of that period I was director of educational research in the Boston schools.

Q. I hand you a letter and ask you if you can tell me just who it is from and who it is to, and the date (handing paper to witness)?

A. (After examining letter). This letter is from the Standard Education Society, by H. M. Stanford and is dated May 24, 1923, and addressed to me as superintendent of schools, Washington, D. C.

Q. And you received that letter?

A. I did, sir.

Mr. WINN. I offer this letter and ask that it be marked "Commission's Exhibit No. 120."

Examiner AVERILL. It may be received.

519 (The document referred to was thereupon marked "Commission's Exhibit No. 120", and received in evidence.)

By Mr. WINN:

Q. Did you receive the enclosure concerning which this letter speaks, Dr. Ballou?

A. I presume that I did, although I do not have a copy of the article referred to in the letter.

Q. I hand you another paper and ask you if you can tell me what that is (handing paper to witness).

A. (After examining paper). This letter, or this is a copy of a letter addressed to Mr. H. M. Stanford, president of the Standard Education Society, by myself, under date of June 7, 1923, and is a reply to Mr. Stanford's letter of May 24th.

Q. The one that was just introduced in evidence?

A. Yes, sir.

Q. Is this copy a duplicate original? Is it a carbon copy?

A. This is a carbon copy of the letter which went to Mr. Stanford.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit No. 121."

Examiner AVERILL. It may be received.

(The document referred to was thereupon marked "Commission's Exhibit No. 121", and received in evidence.)

520 By Mr. WINN:

Q. Now, Dr. Ballou, do you recall anything concerning the paper which came with the letter addressed to you from the Standard Education Society?

A. I do not recall anything about it except the facts as stated in my reply to the communication.

Q. I notice that in your reply you point out the omission of several items, which you feel should be mentioned in an article on the city of Washington, the article being for the purpose of insertion in an encyclopedia, and I hand you the book of the Standard Education Society, of the Standard Reference Work as it was copyrighted under date of 1927, and ask you whether or not the article substantially complies with the suggestions made in your letter to Dr. Stanford?

A. In my opinion——

Q. Wait a minute, before you put it that way. You better not state your opinion on it.

A. All right.

Mr. WINN. Did I ask him for his opinion?

The REPORTER. No, sir.

The WITNESS. Then read the question.

(The pending question was thereupon read by the reporter.)

A. It does not.

I suggested that Washington, as an educational center, ought to be treated as a separate topic. This has not
521 been done in the article on Washington in the Standard Reference Work. Instead some reference has been made in the last two paragraphs to the institutions referred to in my letter of June 7, 1923.

Q. I notice in your letter that you spoke of the Continental Hall as a building, as an important building, which should be mentioned in an article on Washington. Do you find the Continental Hall mentioned in the article on Washington as it is in the Standard Reference Work copyrighted under date of 1927?

A. (Looking at book.) I do not find Continental Hall mentioned. I do find Centennial Hall mentioned, but that was not suggested by me.

Q. Do you know of any Centennial Hall in Washington?

A. I do not.

Q. The Freer Art Gallery is mentioned in your letter as an important building omitted in their article which should be included. Do you find the Freer Art Gallery mentioned as an important building in Washington in that article?

A. (Looking at book): No. It is mentioned as a supplementary institution of learning, following a statement—no, following an enumeration of the important higher institutions of learning.

Q. Is the Freer Art Gallery a supplementary institution to higher institutions of learning?

A. The Freer Art Gallery is not an adjunct to any institution of higher learning. Instead, it is a gallery open to the public, and while it does undoubtedly supply
522 some education to the general public, that is not through any institution of higher learning, but, rather, as in independent institution.

Q. I noticed in the article which is published in the book that the Carnegie Institution, the Geological Survey and the Bureau of Standards, in addition to the Freer Art Gallery, are listed as supplementary institutions in the same paragraph which is devoted to the educational functions of Washington. Are those institutions supplementary to the educational institutions listed in the first part of that paragraph?

A. (Looking at book.) I think they occupy a position in the District of Columbia similar to the position occupied by the Freer Art Gallery, as indicated in my previous answer.

Q. Would you say that the last paragraph of the article in the Standard Reference Work in any way follows the suggestions contained in the third paragraph of your letter to Mr. Stanford?

A. Substantially no.

Q. Could you expand on that any, doctor?

A. The last full paragraph of the article in the Reference Work may have been prepared as a result of the suggestions in my letter, but I do not consider that it reasonably carries out the suggestions in my letter.

Q. Dr. Ballou, have you contributed to encyclopedias, magazines, periodicals or other books during the course of your experience as an educator?

A. I have.

523 Q. Would you say with more or less frequence than otherwise?

A. Not very frequently.

Q. In connection with your educational work have you reviewed articles for encyclopedias, magazines, periodicals, or other publications?

A. Only occasionally, and then largely in the nature of book reviews, or articles on some phase of education, which I contributed to educational journals.

Q. You have had experience then in both contributing and reviewing?

A. Yes, sir.

Q. And this experience has continued over approximately how many years?

A. Twenty or twenty-five years.

Q. In your opinion would such a letter as this letter which you sent to Mr. Stanford and which has been introduced in evidence and marked "Commission's Exhibit No. 121", when considered in connection with the article that must have been previously sent to you, and in connection with the article which has been published in the Standard Reference Work by the Standard Education Society constitute you either a contributor or a reviewer?

A. No, sir.

Q. Did you ever authorize the Standard Education Society to use your name as a contributor and reviewer in the prospectus of their work?

524 A. I did not.

Q. Did you ever receive any remuneration for the business that you had with them in connection with the letters that have just been introduced?

A. I have not.

Mr. WINN. I think that those are all the questions that I have, Dr. Ballou, and I think we will adjourn the hearing.

Examiner AVERILL. Then this case will stand adjourned until Wednesday, November 6, 1929, at Red Cloud, Nebraska.

(Thereupon, at 10:30 o'clock a. m., an adjournment was taken until Wednesday, November 6, 1929, at Red Cloud, Nebraska.)

525–527 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

RED CLOUD, NEBRASKA, *November 6, 1929.*

Met pursuant to notice, 2:00 o'clock p. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn, on behalf of the Federal Trade Commission. No appearance for the respondent.

528 PROCEEDINGS

Examiner AVERILL. This proceeding is in accordance with adjournment from Washington, D. C., on November 2, 1929, and held before Edward M. Averill, trial examiner. Appearances: Robert H. Winn, Washington, D. C., attorney for the Commission; the attorneys for the respondent advising that they did not desire to be present at this hearing.

JAMES KENNEDY, Jr., was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your full name, please.

A. James Kennedy, Jr.

Q. And where do you reside, Mr. Kennedy?

A. Riverton, Nebraska.

Q. And your occupation is what?

A. Stenographer in the law office of George J. Marshall.

Q. Did there come a time, Mr. Kennedy, when a person or persons purporting to represent the Standard Education Society of Chicago called on you?

529 A. Yes, sir; I believe the 29th day of July.

Q. In what year?

A. 1929.

Q. What, as nearly as you can recall, Mr. Kennedy, happened at that time?

A. Well, this man came in. He asked for Mr. Marshall. I told him Mr. Marshall happened to be out of town; and he said that he had a proposition that he would like to have presented to Mr. Marshall; it was Standard Education

Society's new reference work encyclopedia. I told him Mr. Marshall had just purchased the New International two days before, and he said that he was very sorry of that; and he again explained his work. He said that he believed he had a much better work than the New International; well, it was better bound in a way than the set Mr. Marshall would be getting; it would be at the same price; and then he explained that in order to introduce the sales boosting campaign that they were coming into Riverton and they were going to give away three sets of the Standard Reference Work. That the reason of this was that they wanted a corps of school teachers to come into the territory and they were going to sell these books in the surrounding territory, and they wished to have the people be able to see them, and so they wanted these three sales in the business districts where they could be on display; and then he
530 began explaining just how the books were put up. He turned to my employer's law library, and pointing out the sheep skin binding on the Northwestern Reporter, said that it was bound in sheep skin only, and more highly—very highly embossed, and that it was the newest work on the market. He came to the contract, and he wrote this contract out. At first he wrote, for the ten books of the Standard Reference Work, he wrote that $110, which is the price that he told it was, and then he wrote " free " for them; and then as he got through that he took and wrote $69.50 for the ten years' revision service that was to come with the books; and when I asked him how it come that they were giving them free and then charging $69.50, he said that the people that bought the sets for $110 had to pay this $69.50 besides during the ten years if they took the revision service, and that they would have to pay this at the rate of $6.95 a year; and, due to the fact that we were getting the set of books free, we had to pay this $69.50 total within a year. I told him that I wouldn't take them that way; that I didn't think that I wanted to bind myself up; and he told me that if I would take it every two months and make a $5 payment every two months that that would be all right with him. So he wrote the contract out in that way—that I was to get the set of books free, that was charged $110 for, and I was to get the revision service for $69.50, paying down $9.50 and $5 every two months; and then he explained,
531 when I asked him concerning something to display them in, that there would be a special container sent to display them to the public.

Q. Did you sign the contract, Mr. Kennedy?

A. I signed the contract; yes.

Q. And did you pay any money under that contract?

A. I paid $9.50 at that time.
Q. Did you pay that by cash or by check?
A. I paid it in my own personal check.
Q. I hand you a piece of paper, and ask if you can tell me what that is, sir?
A. It is a check that I wrote to the Standard Education Society for $9.50, as an initial payment on these books.
Q. And that is the check that you gave the agent?
Q. Yes, sir.
Q. Do you recall the agent's name that you gave that to?
A. Mr. B. L. Martin.
Q. I notice that it is endorced by one F. A. Duraway, agent. Did you talk with Mr. Duraway?
A. I never met Mr. Duraway during the time he was there.
Q. Was this check honored at your bank?
A. It was.
Q. And your account was depleted by $9.50?
A. Yes, sir.
Mr. WINN. I offer this check in evidence, and ask that it be marked "Commission's Exhibit No. 122."
532 Examiner AVERILL. The paper in question will be admitted in evidence, and marked "Commission's Exhibit 122."
(Same was thereupon duly marked for identification as "Commission's Exhibit 122", and retained by the examiner.)
Q. I hand you another paper, Mr. Kennedy, and ask if you can tell me what that is, sir?
A. This the first letter I received from the Standard Education Society, telling me that they——
Q. Don't state what it tells you. Who is it signed by?
A. H. M. Stanford.
Q. And what is the date of that letter, Mr. Kennedy?
A. It's August 8, 1929.
Q. You received this letter, did you?
A. Yes, sir.
Mr. WINN. I offer this letter in evidence, and ask that it be marked as "Commission's Exhibit 123."
Examiner AVERILL. The paper in question will be admitted in evidence, and marked "Commission's Exhibit 123."
(Same was thereupon duly marked for identification as "Commission's Exhibit 123", and retained by the examiner.)
Q. Did you afterwards receive the books, Mr. Kennedy?
A. I did.

Q. I hand you another paper and ask you if you can tell me what that is?

A. It is a copy of a letter I mailed to the Standard
533 Education Society.

Q. On what date?

A. On August 13, 1929.

Q. Now you say it is a copy, Mr. Kennedy. Do you mean it is a copy that you typed from the original, which you sent to them, or is it a carbon copy that was in the machine at the same time as the original which you sent them was in the machine?

A. That is a carbon copy that was in the machine.

Q. At that time?

A. Yes, sir.

Q. And you mailed the original of this to the Standard Education Society?

A. Yes, sir.

Mr. WINN. I offer this in evidence, and ask that it be marked as "Commission's Exhibit 124."

Examiner AVERILL. The paper in question will be received, and marked "Commission's Exhibit 124."

(Same was thereupon marked for identification as "Commission's Exhibit 124", and retained by the examiner.)

Q. I hand you another letter, composed of two pages, and ask you if you can tell me what that is, sir?

A. It is a letter I received from the Standard Education Society. That was sent to me on August 22, 1929.

Q. And who is it signed by?

534 A. It is signed by L. Anderson.

Mr. WINN. I offer this letter composed of two pages in evidence, and ask that it be marked "Commission's Exhibit 124."

Examiner AVERILL. The papers in question will be received and marked "Commission's Exhibit 125."

(Same was thereupon duly identified as "Commission's Exhibit 125", and retained by the examiner.)

Q. I hand you another letter, composed of two pages, and ask if you can tell me what that is, sir?

A. It is a carbon copy of a letter that I wrote to the Standard Education Society on August 24, 1929.

Q. Did you send the original of that letter to the Standard Education Society?

A. I did.

Q. And that is, again, a duplicate original?

A. Yes, sir; duplicate original.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 126."

Examiner AVERILL. The papers in question will be received in evidence and marked "Commission's Exhibit 126."

(Same was thereupon duly marked for identification as "Commission's Exhibit 126", and retained by the examiner.)

Q. I hand you another paper, and ask if you can tell me what that is, sir?

535 A. It is a letter I received from the United Publishers' Protective Association, signed by H. L. Longenecker, and it is written on the 28th day of August 1929.

Mr. WINN. I offer this paper in evidence and ask that it be marked "Commission's Exhibit 127."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 127."

(Same was thereupon duly marked for identification as "Commission's Exhibit 127", and retained by counsel.)

Q. I now hand you another paper and ask you if you can tell me what that is, sir?

A. It is a carbon copy of a letter I mailed to the United Publishers' Protective Association on August 30, 1929.

Q. And you sent that letter?

A. Yes, sir; through the mail.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 128."

Examiner AVERILL. The paper in question will be received and marked "Commission's Exhibit 128."

(Same was thereupon duly marked for identification as "Commission's Exhibit 128", and retained by the examiner.)

Q. I hand you another paper and ask if you can tell me what that is, sir?

A. It is a letter I received on September 18, 1929.

Q. Did you receive it on that day?

536 A. Well, no; that's right. It was mailed on September 18, 1929.

Q. Rather, you better say it was dated then.

A. Yes, sir; dated. It is from the United Publishers' Protective Association and signed by H. L. Longenecker.

Q. And you say that is addressed to you?

A. Yes, sir.

Q. And you received it?

A. Yes, sir.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 129."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 129."

(Same was thereupon duly marked for identification as "Commission's Exhibit 129", and retained by the examiner.)

Q. I now hand you another paper, Mr. Kennedy, and ask if you can tell me what that is?

A. That is a carbon copy of a letter I wrote on September 20, 1929, to the United Publishers' Protective Association.

Q. And you sent that letter to them?

A. Yes, sir.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 130."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 130."

(Same was thereupon duly marked for identification as "Commission's Exhibit 130", and retained by the examiner.)

537

Q. I hand you another paper, Mr. Kennedy, and ask if you can tell me what that is, sir?

A. It is a letter written on September 23, 1929, by the United Publishers' Protective Association, signed H. L. Longenecker, that I received from them.

Mr. WINN. I offer that in evidence and ask that it be marked "Commission's Exhibit 131."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 131."

(Same was thereupon duly marked for identification as "Commission's Exhibit 131", and retained by the examiner.)

Q. Now, Mr. Kennedy, you testified that when this man came into your office he asked for a Mr. Marshall. Who is Mr. Marshall?

A. Mr. Marshall is my employer.

Q. And the name of the man that talked to you was what?

A. Mr. B. L. Martin.

Q. You say that he wrote on the contract that you signed, opposite the words "Standard Reference Work, bound", "$110"?

A. Yes, sir.

Q. What was the purpose of that, did he say?

A. He said that was the regular price of the books as sold to the general public.

Q. And that was inclusive or exclusive of the revision service?

538

A. That was exclusive of that.

Q. The revision service?

A. Yes. It came at the rate of $6.95 a year to the general public.

Q. Did Mr. Martin say anything to you as to how long these books had been off the press?

A. He said they were the very latest encyclopedia work that was off the press; all others were at least two years old; that they had all the latest news in the world that would be of interest in an encyclopedia set.

Q. He told you that the latest news was to be found in this encyclopedia?

A. Yes, sir.

Mr. WINN. Those are all the questions that I have, Mr. Kennedy. Do you have any, Judge Averill?

Examiner AVERILL. Yes.

Examination by Examiner AVERILL:

Q. This transaction as I understand it, Mr. Kennedy, was on July 29, 1929?

A. Yes, sir.

Q. And did I understand you to say that this agent in making his representations to you stated something about three sets were to be given free as a boosting cam-
539 paign or as a part at least of a boosting campaign?

A. Yes.

Q. And this set that he was offering you was to be one of these three?

A. Yes. He at the time did not explain anything about the revision service until he had written out the contract, and when the contract was handed to me for signing, I noticed there was a charge of $69.50 for the revision service, and I asked him why that was, because it was my impression, I told him that I was to get the set free; and he said, "Well, you are getting the set free, but", he says, "you are paying for this revision service that the general public has to pay besides paying this $110"; and when he said that the general public would have to pay $6.95 a year, I told him that would satisfy me; I would like to pay it that way too. He said, "No; the company wouldn't allow that did", because they had to have that when they were giving the sets away; they had to have that $69.50 within at least a year. I told him I wouldn't sign the contract within a year.

Examiner AVERILL. Yes; I understood that part of it. That is all.

Further direct examination by Mr. WINN:

Q. You testified just a moment ago that you told
540 the agent it was your impression that you were to get the books free. How did it happen that $69.50 was in the contract; from what did you gain that impression, Mr. Kennedy?

A. Well, he had told me that the books from the company—due to the fact that it was called this sales boosting campaign and the teachers coming into the country would be selling them, that they wanted them displayed and they just had to have a display in some of the prominent business places.

Q. Yes; but from what did you get the impression that the books were to be free?

A. Well, he point-blank stated it.

Q. He told you that?

A. Yes, sir.

Q. Yes. Did he purport to be a salesman of the company?

A. Yes. He had—well, it was kind of a case like, about the size of a book, and on one side was a full-page ad from some magazine and on the other side was his company's identification of him, it seemed. Anyhow, his name was on there, and that's about all I did was look at it. I just seen his name and the company's statement there.

Mr. WINN. That's all I know of, Mr. Kennedy. Thank you very much, sir.

(Witness excused.)

541 HENRY WELSCH, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. What is your name, please, sir?

A. Henry Welsch.

Q. And where do you reside, Mr. Welsch?

A. At Riverton, Nebraska.

Q. And your occupation is what?

A. Shoemaker.

Q. Did there come a time, Mr. Welsch, when a person purporting to represent the Standard Education Society called on you?

A. There was.

Q. And when was this?

A. It was on July 29, 1929.

Q. And where was it?

A. At Riverton.

Q. What, as nearly as you can recall, Mr. Welsch, was this man's story; or, first, what was his name?

A. He signed the contract B. L. Martin.

Q. Was anybody else with him that you saw?

A. No; there wasn't.

Q. Now, what was his story as nearly as you can recall?

542 A. Well, he come in there and he told me that he had been over there talking to Mr. Marshall; and he found out I had quite a family going to school, of five children, and he said he had one of the best reference works that there ever was put out, and it was enough to give a child a university education; and he told me that he was out here

to place three sets in this community, and as I had five children going to school he had picked me to leave one set with me; and he said, after I received the books if I displayed them at the counter in my place of business, that there will be a force around of school teachers—mainly school teachers, he said—that would sell the books, and while they was working why they could refer to my place of business and come and look those books over; and he said, "You will have to display them for thirty days." And he had a little sample book of them, and it was just about dinner time and my boy come home from school, and he was quite interested in books like this, and he looked it all over, and he told him the finest story of what there was in them books; and he [the son] said, "Is there anything about aviation?" and he said "There's whole volumes on it; just on certain subjects, whole volumes"; and finally he talked me into it, and I consented that I would accept one of these sets of books.

Q. What was that set to cost you?

543 A. Well, that set was priced at $110.

Q. What was it to cost you?

A. It wasn't to cost me anything for the service I was going to give them for thirty days.

Q. That was for displaying the books in your store?

A. Yes; displaying the books in the store, and he said that it was advertising that was to be charged up for this—the advertising department of his company. So after he got through with this he told me about the loose-leaf service for ten years, and he said there was a charge of $59.60 for it, and he said it was to be paid $5 in twelve monthly installments and $9.50 cash with the order; so he filled out the contract to this effect, and of course I signed it. I gave him my personal check for it; and afterwards I got a little suspicious about it, as he didn't leave me no copy of the contract; so I went out on the street and I hunted him up again, and just happened to catch him at the filling station while he was putting in the gas, and I asked him for a copy, and he first kind of refused to give it, and he said about one out of a hundred would ask for a copy; and then I said if I didn't get a copy why I didn't want the deal at all. So he wrote me out a copy of the contract. And then, so he told me that Mr. Marshall had had a set of it for over two years, and he said it was the best books that was ever on the market.

544 Q. Was the contract that he wrote for you identical with the one that you signed?

A. It was. The copy he give me was just identical with the first one.

Q. Do you know whether or not Mr. Marshall has a set of these books?

A. I went right over there and I asked him to see them, and he didn't have any.

Q. That's all right, if you only know from what he told you.

Examiner AVERILL. No; he said he went over to see him, and he said he didn't have any.

Q. You went to see and he didn't have any?

A. I went to Mr. Marshall, and Mr. Marshall said he never seen these books, but he said that he had one there for two years—a set.

Q. You say you gave this man your personal check?

A. Yes, sir; I did.

Q. I hand you a paper, Mr. Welsch. Can you tell me what that is, sir?

A. That is my check what I issued to the Standard Educational Society for $9.50 on July 30th.

Q. You mentioned a moment ago that the salesman was there on July 29th. I notice that the date of the check is July 30th, but that the cancellation perforations indicate that the check was cashed on July 29th. Can you say
545 which of those dates you wrote it?

A. No; only I was mistaken in the date myself. But I soon found out that this check hadn't been sent in with the contract; that it had been cashed right in the bank, because it was right there the next day after the bank returned my business for the month and this check had been included.

Q. As a matter of fact, it was cashed one day prior to the time it was dated?

A. Well, it might be my mistake.

Q. Well, your account was depleted by that amount in any event?

A. It was.

Mr. WINN. I offer that check in evidence and ask that it be marked "Commission's Exhibit 132."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 132."

(Said exhibit was thereupon duly marked for identification as "Commission's Exhibit 132", and was retained by the examiner.)

Q. I hand you another paper, Mr. Welsch, and ask if you can tell me what that is; sir.

A. That is a copy of the contract I asked Mr. Martin to give to me at the day when we closed the deal.

Q. And you say that that is identical with the copy that you signed?

A. Yes, sir; identical with the copy.

546 Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 133."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 133."

(Said exhibit was thereupon duly marked for identification as "Commission's Exhibit 133", and was retained by the examiner.)

Q. Now, Mr. Welsch, I notice that in this contract across the top is written, "Charge to adv. department." Do you know what that meant?

A. He told me that was to be charged to the advertising department of his company. The price of the books, or $110, was to be charged to the advertising department, as they were out to distribute those three sets of books, he said, in this town, and charge it up for advertising.

Q. I notice that opposite the words "Standard Reference Work, bound" the figure $110. What was that to represent?

A. That was the price for the works—for the ten volumes—what we was to give, if it was sold to the public.

Q. The price to the public was $110?

A. The price to the public was $110.

Q. And it was to be given free to you?

A. It was to be given free for the thirty days' service.

Q. Did you get the books?

A. I got the books; yes, sir.

547 Q. Did you put them on your counter for thirty days?

A. Yes, sir; I just complied with it.

Q. Did you ever see any school teachers selling the books?

A. I never; I never seen anybody.

Examiner AVERILL. The school teachers weren't to sell them.

The WITNESS. Yes; the teachers was to sell in their vacation time; they was to sell the books.

Mr. WINN. Yes; that is what Mr. Kennedy was talking about in his testimony.

The WITNESS. And he was to run for thirty days a big ad in our local paper to the effect that there was three sets in town to be looked at and investigated to see what the books was like; but neither one of those things—I never seen anything in the paper, and I never seen a school teacher, and I never seen anybody else interested enough to look the books over.

Q. Were any references made to you as to the lateness or newness of the material that was in the encyclopedia?

A. He said it was the latest work out.

Q. Who said that?

A. That is, Martin; this Martin said it was the latest books out; there wasn't anything like it.

Mr. WINN. That is all the questions that I have to ask this witness.

548 Examiner AVERILL. I have none.

The WITNESS. I have since found out that he sold them to two schools out there for $60 cash; sold them for $60 cash, a set.

(Witness excused.)

JAMES KENNEDY, Jr., resuming the stand, further testified as follows:

Direct examination (continued) by Mr. WINN:

Q. Now, Mr. Kennedy, you testified a moment ago that you had signed a contract which had been prepared for you by Mr. Martin. I hand you the contract, which has been marked "Commission's Exhibit 133", and ask you whether or not the contract which you signed was in all respects filled out in the same manner as that; and, if not, in what respects it was different.

A. The contract as a whole is the same, excepting that instead of "each month" he had written "every two months"; and then he put in there the same as in this contract—the amount, $69.50; and then he got down to the Standard Reference Work and he marked the $110 there for the ten volumes, and then he wrote over on where

549 the price should have been placed the word "free"; and then he told me afterwards, before I had signed the contract though, that there was a charge for the loose-leaf service that they were giving during the next ten years, and that this revision service would be sent every three months.

Q. Was the price, $69.50, put in as the fee for revision service as it is there?

A. Yes, sir.

Q. Were the words "Charge to adv. department" on your contract as they are on there?

A. Yes, sir. Just before I signed the contract he—well, as I was starting to read the contract, he said—oh, I forget, "We have go to charge that to the advertising department." He took the contract back in his hand and wrote up at the top "Charge to advertising department."

Mr. WINN. I think that is all, Mr. Kennedy.

(Witness excused.)

LOUIS C. LARSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WINN:

550 Q. Give your name, please.

A. Louis C. Larson?

Q. You reside where, Mr. Larson?
A. Riverton Nebraska.
Q. And your occupation is what?
A. Printer.
Q. Did there come a time, Mr. Larson, when a person or persons purporting to represent the Standard Education Society called on you?
A. Yes, there did.
Q. When was this?
A. That was on July 29, 1929.
Q. And where did they call on you?
A. At my office in Riverton; at the Review office.
Q. And how many were there, Mr. Larson?
A. Well, I am sure there was two.
Q. Do you recall their names?
A. One was Duraway, and I never had a chance to meet the other.
Q. Duraway was the one that talked to you?
A. Yes, sir.
Q. And what, Mr. Larson, as nearly as you recall, was his story?
A. Well, he came in and he introduced hisself as Mr. Duraway, and he told me that he was representing the Standard Education Society in encyclopedias that he had to sell, and that he was placing three sets of these
551 books in our local community, in town if possible, and that he had just sold Mr. Kennedy a set, and that he wanted me to look the set over; and he had a sample of it there and he told me it had, I forget how many pages on aviation and several different subjects, and how beautifully they were bound; and I looked them over, and he told me that he was to give me these ten volumes of these books free of charge, and the approximate cost of those ten books was $110, and I was to get those free if I would subscribe to his loose-leaf binding book for ten years at a cost of $69.50, and I was to take the books that I got and put them—he wanted me to put them in my window, if possible, so I could display them to the people there for about thirty days, he said, and then he said I could take them down. In fact, he didn't care what I did with them then. And so I told him that was all right. And then he drew up a contract; and then he drew the contract up, and he marked on the contract "free"—the $110—the ten books for $110 free—and I was to pay for the loose-leaf binding $69.50; and I signed my name and gave him a check for $9.50 in advance, which was to go with the contract. And then—
Q. Well, I hand you a copy of a contract, which has been marked "Commission's Exhibit 133", and ask you whether

or not you can indicate to me the difference, if any, between this contract and the contract that you signed?

A. It is the same contract.

552 Q. Was it filled out in the same way, as nearly as you can recall?

A. Except here [indicating]; I believe it was "Duraway."

Q. The agent signed his name as Duraway rather than as Martin, as this contract is signed?

A. Yes, sir.

Q. I hand you another paper, Mr. Larson, and ask if you can tell me what that is, sir?

A. It is my personal check, wrote on July 29, 1929, for $9.50.

Q. And payable to whom?

A. Payable to the Standard Education Society.

Q. Was that check honored through your bank?

A. Yes, sir; it was.

Q. And your account was depleted by $9.50?

A. Yes.

Mr. WINN. I offer this check in evidence and ask that it be marked "Commission's Exhibit 134."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 134."

(Same was thereupon duly marked for identification as "Commission's Exhibit 134", and was retained by the Examiner.)

Q. Did you get the books, Mr. Larson?

A. I did.

Q. Have you them now?

A. Yes.

553 Q. I hand you another paper, and ask you if you can tell me what that is, sir?

A. This is the letter received from the Standard Education Society by me, and it was written on October 29, 1929, and signed "S. Anderson."

Mr. WINN. I offer this paper in evidence, and ask that it be marked "Commission's Exhibit 135."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 135."

(Same was thereupon duly marked for identification as "Commission's Exhibit 135", and was retained by the examiner.)

Q. Were any references made to you, Mr. Larson, regard- the newness or lateness of the material that composed this Standard Reference Work?

A. Yes; the books were to have the latest covers, and were to be right off the press; and they were supposed to have—well, to have new readable type that they had just got out.

Examiner AVERILL. Now, you say, "they were supposed to have." Do you mean that he told you that they were supposed to have?

A. Yes, he did; and the loose-leaf work was to be the same as the ten volumes, and we were to get those for ten years.

Mr. WINN (resuming):

Q. Well, now, as to the material, not the paper or binding, but the articles that were in the book—were any references made as to the newness or lateness of them?

A. They were to be the latest.

Mr. WINN. I think those are all the questions that I have to ask Mr. Larson.

Examiner AVERILL. I have none.

(Witness excused.)

Mr. WINN. Then if you will please adjourn this hearing to Chicago, Judge Averill, November 8, 1929.

Examiner AVERILL. Gentlemen, there being no other witnesses called, this hearing at Red Claud, Nebraska, is concluded, and we will adjourn the taking of testimony to Chicago, Illinois, November 8, 1929, at 11 a. m.; room 2243, Transportation Building, 608 South Dearborn Street.

555 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

CHICAGO, *November 8, 1929.*

Met pursuant to adjournment at 11:00 o'clock a. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn (Washington, D. C.) for the Federal Trade Commission. Langworthy, Stevens, McKeag & McCornack, by James McKeag, for the respondents.

556 PROCEEDING

Examiner AVERILL. This is pursuant to adjournment from Red Cloud, Nebraska. You may proceed.

HAROLD M. STANFORD was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. If you will give your name, please, Mr. Stanford.

A. Harold M. Stanford.

Q. And you reside where, Mr. Stanford?

A. 2411 Lincoln Street, Evanston, Illinois.
Q. What is your occupation, sir?
A. Publisher.
Q. Of what?
A. Perhaps I should qualify that by saying that I am not a personal publisher, but I am the president of a publishing company.
Q. And you are president of the Standard Education Society?
A. Yes, sir.
Q. What is the Standard Education Society?
A. It is a publishing company.
Q. A corporation?
A. It is a corporation.
557 Q. And in what State was it organized, Mr. Stanford?
A. Minnesota.
Q. And where do you have your principal place of business?
A. Chicago.
Q. What is it engaged in publishing?
A. It has been publishing the Standard Reference Work for a number of years.
Q. Approximately how long has the Standard Education Society been publishing the Standard Reference Work?
A. Under that name and under a former name it has been publishing that since its incorporation.
Q. When was that?
A. The incorporation was in 1909 and we began distributing the work in 1910.
Q. What was the previous name of the work?
A. It was known as the Aiton's Encyclopedia for about a year and a half, then it was changed to the Standard Reference Work.
Q. It was published as Aiton's Encyclopedia for about a year and a half prior to the incorporation of the Standard Education Society?
A. No, the incorporation in 1909 was under the name of Wells Brothers Publishing Company. The name was not changed to Standard Education Society until 1917.
Q. Then the predecessor of the Standard Education
558 Society publishing the predecessor of the Standard Reference Work began operations in 1907 or '08?
Mr. McKeag. In 1909.

By Mr. Winn:

Q. Aiton's Encyclopedia was the predecessor of the Standard Reference Work, is that correct?
A. Correct.

Q. And the work which is now known as the Standard Reference Work was first conceived as Aiton's Encyclopedia, is that correct?

A. Correct.

Q. When was Aiton's Encyclopedia first published?

A. It was first off the press in June 1910.

Q. And, as I understand it, it was sold by Wells Brothers Company, agents?

A. Yes; the Wells Brothers Publishing Company was organized to distribute the encyclopedia then in preparation by Mr. Aiton.

Q. And the Standard Education Society was later incorporated for the same purpose?

A. The name of the Wells Brothers Publishing Company was changed to Standard Education Society. It was the same corporation.

Q. The same corporation, and that took place when?

A. As I recall it, it was in 1917.

Q. That took place in 1917, so that the name of
559 Wells Brothers was changed to Standard Education Society in 1917?

A. Yes. If I should discover upon looking it up that there is a change in the date, may I change the record on that?

Q. We will say approximately 1917 then.

A. All right.

Q. When was the name of the book changed from Aiton's Encyclopedia to the Standard Reference Work?

A. April 1, 1912.

Q. So that the corporation when it was known as Wells Brothers published not only Aiton's Encyclopedia, but its successor, the Standard Reference Work?

A. Yes, sir.

Q. And it continued to publish the Standard Reference Work for approximately five years before the name was changed to the Standard Education Society?

A. The name of the corporation changed.

Q. The name of the corporation changed to the Standard Education Society?

A. Yes.

Examiner AVERILL. I think the witness testified the Standard Education Society was incorporated in 1909.

Mr. MCKEAG. That was the origin of the corporation which was later known as the Standard Education Society. It was originally known as the Wells Brothers Publishing Company.

Examiner AVERILL. When was the legal entity
560 known as the Standard Education Society incorporated, if it was incorporated?

Mr. McKeag. That was originally incorporated as the Wells Brothers Publishing Company in 1909. You see, you can change the name of a corporation without changing the status of a corporation.

Examiner Averill. You simply changed the name then?

Mr. McKeag. Yes.

Examiner Averill. Oh, I see. I thought it was incorporated 1909.

Mr. McKeag. That is what I understood the witness to say.

The Witness. I tried to make that clear.

Mr. Winn. I got that.

Examiner Averill. You gentlemen that are familiar with the records, of course, can get that, but I cannot, and I want to.

By Mr. Winn:

Q. How long, Mr. Stanford, have you been connected with the Standard Education Society, or its alter ego?

A. Predecessor?

Q. Well, it was not exactly the predecessor, as I understand it; it was the same corporation under a different name.

A. 1910.

Q. That was approximately a year after its incorporation?

A. Yes; but before it began to function as the dis-
561 tributor of this work.

Q. I see. Now, as I understand it, the Standard Education Society at the present time is engaged in publishing an encyclopedia, is that correct?

A. Among its other—among various activities.

Mr. Winn. I am putting these questions this way, Mr. McKeag, because it is the easiest way to get it.

Mr. McKeag. Go ahead, I am not going to object.

Mr. Winn. It is merely a matter of form.

Mr. McKeag. Yes.

By Mr. Winn:

Q. It also publishes an extensive service that continues in connection with its encyclopedia for a number of years?

A. Yes.

Q. And that extension service consists of leaflets or pamphlets that are kept up to date as things are done in the world, current events, so as to provide the encyclopedia which is published by the Standard Education Society with a means of keeping up to date?

A. Yes, sir.

Q. That is correct. I believe you testified that you were president, Mr. Stanford, of the Standard Education Society?

A. I am.

Q. What is the incorporation, that is, how many shares of stock are outstanding on the books of the Standard Education Society?

562 A. All of the stock.

Q. How much is that?

A. 1,000 shares.

Q. And you own some of those shares; do you own some of those shares?

A. There is stock standing in my name on the records of the corporation.

Q. How many shares of stock is standing in your name on the books of the corporation?

Mr. McKeag. I object. I don't think that is material to the issues in this case.

Mr. Winn. Mr. Stanford individually is a respondent in this case, Mr. Averill.

Examiner Averill. I know. I am just looking to see here.

Mr. McKeag. Well, if he is a stockholder of the corporation, that does not make him personally responsible for the activities of the corporation.

Examiner Averill. Gentlemen, one of the allegations of the complaint is that H. M. Stanford is president and general manager and principal owner of the stock of the Standard Education Society, and the complaint in its caption says that it is against the Standard Education Society, a corporation, and H. M. Stanford individually and as president of the Standard Education Society, so I shall have to overrule that objection. It appears to be one of the allega-

563 tions. The witness may answer the question.

A. 250½ shares.

By Mr. Winn:

Q. That is, 250½ shares of the stock of the Standard Education Society in registered as yours in the corporate books?

A. That is the record.

Q. Does any stand in the name of any members of your family?

A. None.

Q. Who owns the rest of the stock of the corporation?

Mr. McKeag. I object to that as immaterial. They are not parties.

Mr. Winn. They are not parties, but I think the same ruling that was made before and for the same reasons would go as far as that question is concerned.

Examiner Averill. Gentlemen, I think that counsel has the right under this complaint to inquire into the ownership of the stock for the purpose of proving or attempting to

prove the allegation of the complaint. The objection is overruled. Read the question to the witness.

(Question read.)

A. There are several other holders of stock.

By Mr. WINN:

Q. Who?

A. There is one W. H. Ward.

Q. How many shares does he have?

564 A. I could not say offhand.

Q. Could you say approximately?

A. I would say that there was standing in his name an amount equal to mine, and I think there are some other shares in his name.

Q. Mr. Ward is also an officer of the corporation?

A. Vice president and secretary.

Q. Who else, Mr. Stanford, holds stock in the corporation?

A. There is A. J. Greener.

Q. How many shares does Mr. Greener have?

A. I could not say as to that.

Q. At the present time what would you say are approximately his holdings, the approximate amount?

A. Well, I should say thirty or forty shares.

Q. Are there any others, Mr. Stanford?

A. There have been a number of others, but I cannot say at this time whether the stock still stands in the names of these parties or not. The corporation has at times bought back stock, and whether those have been transfered out of the names of these holders I cannot say without consulting the records.

Q. Does Mr. Ward have the entire interest in the stock which stands in his name, is he a trustee for that stock, or does he stand in a fiduciary capacity thereto for the benefit of other persons?

A. Not to my knowledge.

565 Q. Mr. Greener occupies the same capacity?

A. Yes.

Q. And so far as the other approximately 450 or 500 shares are concerned, you don't know who owns them?

A. I know that a part of that stock is up as collateral for some loans.

Q. That is, loans made by the corporation or made by the individual owners?

A. I think that stock that is used as collateral is put up by individuals; the corporation has none of its stock up as collateral.

Q. Has the stock of the corporation that you spoke of a moment ago as having been bought back by the corporation been reissued by the corporation?

A. It may or may not have been. I could not say certainly as just what the record shows at this time.

(Discussion off the record.)

By Mr. WINN:

Q. What is the method generally, without going into detail, Mr. Stanford, if you can tell us, of disposing of the books which the Standard Education Society publishes?

A. They are distributed almost wholly through agents.

Q. In Illinois, or in other States as well?

A. Throughout the United States.

Q. Throughout the United States?

566 A. And elsewhere.

Q. There are other companies engaged in publishing books of a similar character throughout the country?

A. Yes.

Q. And disposing of them in the same manner, Mr. Stanford?

A. I have heard so.

Q. Don't you know that there are?

A. I have not seen it done.

Q. Have you seen any similar books in other States than the State of Illinois or in Illinois?

A. I have seen them in Illinois.

Q. What books have you seen in Illinois, what other books?

A. Any particular kind of books that you refer to?

Q. Similar to yours, the World Book?

A. I have seen that; yes.

Q. Do you know where that is published?

A. In Chicago.

Q. Have you ever seen the World Book in any other place, in any other States than Illinois?

A. I don't recall having seen it elsewhere.

Q. But you have heard you have some competition?

A. Oh, yes, yes; that is a matter of common talk at least.

Q. You said that usually there were agents who sold your books?

A. Yes.

567 Q. What is the price of the Standard Reference Work?

A. The price under which it has been distributed in recent years in the better binding is $69.50, which includes the loose-leaf-extension service.

Q. That is, the Standard Reference Work and the loose-leaf-extension service is sold for $69.50?

A. That is correct.

Q. And how many volumes are there in the Standard Reference Work?

A. Ten volumes.

Q. Do you also sell in connection with the sales of the Standard Reference Work other books covered by the same contract and contracted for in the same transaction as that in which the Standard Reference Work is sold?

A. There are certain agents that make a practice of selling the Standard Reference Work and several other sets in combination as a unit sale.

Q. What is the price of these other sets that are sold in combination to make a unit sale, when sold under those circumstances?

A. They are never sold individually by us.

Q. Do you know the price of them?

A. You mean the price at which they are sold?

Q. Yes.

Mr. McKeag. You mean by the Standard Education Society?

568 Mr. Winn. I am not raising that point at the present time at all. Just some books, usually fiction, I believe, are sold at times in connection with the Standard Reference Work. Now, the Standard Reference Work by itself is sold for $69.50, the witness has testified. Now, it seems to me that he knows what the price is either of the fiction works when sold in connection with the encyclopedia or the total combination price, it makes no difference.

A. The usual combination offer has been at $89.

By Mr. Winn:

Q. And that includes certain fiction and the Standard Reference Work and the extension service?

A. Yes.

Q. Do you know whether or not the fiction that has gone in these combination sales has been of any fixed set, or any fixed number of sets, or whether it is sometimes three sets, or three separate authors, and sometimes three sets of other authors and sometimes two and sometimes four sets?

A. There is a considerable number of sets that the agent is permitted to offer in those combinations, so that the sales vary quite a little in that.

Q. Did you ever hear of a man named Clif Swor?

A. I have heard the name; yes.

Q. Has he ever been an employe of the Standard Education Society?

569 A. Unfortunately, yes.

Q. Can you tell me approximately when he was an employe of the Standard Education Society?

A. I am not clear as to whether my answer that he is an employe of the Standard Education Society is strictly correct. We do not consider these agents as our employes.

They sell on commission entirely. They receive no salaries or other remuneration from us. They take a set of samples and go out and secure orders which are turned in to us and they are paid a commission on those orders.

Q. And Mr. Swor was engaged with the Standard Education Society in that capacity?

A. He distributed some of our books in that way.

Q. Approximately when was he engaged in the distributing of your books in that way?

A. As I recall it, about three years ago, he was connected with us for some months, and then he no longer distributed our goods until last year, or perhaps even early this year, he took a few orders which led to difficulty and unpleasantness, and we discontinued his activities.

Q. Were his activities discontinued for the same reason approximately three years ago?

A. No; he transferred to another company three years ago, although we found that his business was very unsatisfactory, and I don't think that fact developed until after he
570 had left us.

Q. That fact developed after he had left you approximately three years ago, but before he again occupied that same capacity in the recent past?

A. Yes.

Q. In the prospectus of the Standard Reference Work, Mr. Stanford, which bears the copyright date 1926, I notice that there are several pages of names listed as purporting to name certain contributors and reviewers for the Standard Reference Work. Did those individuals, or any of them, ever receive from the Standard Education Society, either under its present name or under its past name, any remuneration for their work as contributors or reviewers?

A. Some of them were given sets of the books for their reviewing articles, and I recall several instances where they were paid for their services.

Q. Would that cover authors and editors, or contributors and reviewers?

A. Authors and editors I think were without exception paid specifically for their services either on a time basis, or on the basis of the article contributed; while the contributors and reviewers in the main rendered the service of reviewing articles gratuitously, although in most instances sets of the books were given them for such work.

Q. You say that happened in most instances?

571 A. I would not say the proportion of those; in many instances the services rendered was the mere revision or suggestion as to a single article.

Q. Would these men suggest as to an article and read over an article for you, or would they themselves originate an article?

A. There was some variance in that. I would say that in most instances the article was prepared by the editors and submitted to them for criticism and suggestion.

Q. Did such persons authorize the Standard Education Society to use their names in the prospectus as contributors and reviewers?

A. The letter that was sent to them with the article for review stated something as follows: "In consideration of your services in this matter, we will be pleased to list you among our contributing and reviewing editors."

Q. When was the Standard Reference Work first copyrighted, Mr. Stanford?

A. You mean under that name?

Q. Yes.

A. April 1912.

Q. And when was Alcon's Encyclopedia first copyrighted, if you know?

A. The volumes came out over a period of several months in 1910, and each one was copyrighted separately as it appeared.

572 Q. Has the Standard Education Society been copyrighted and recopyrighted since 1912; that is the date, I believe?

Examiner AVERILL. Wait, that is not the question.

The WITNESS. That is not what you mean.

Mr. AVERILL. I don't think you mean the Standard Education Society.

By Mr. WINN:

Q. I meant the Standard Reference Work, has it been recopyrighted since June 1912, that is the date he gave, isn't it?

A. April 1912. Although the set was reprinted about twice each year, a copyright on new material was not taken out every year, because sometimes there was not so much of that revision matter. As a rule we revised it rather thoroughly every two or three years, and immediately following the publication of such revised edition, a new copyright covering that edition, covering that revision matter, was secured.

Q. You say that the book was recopyrighted rather extensively?

A. Revised rather extensively.

Q. Revised I mean. I am sorry. Could you elucidate on that a little more, as to what you mean by revised rather extensively?

A. I might make it clearer by stating that Aiton's Encyclopedia appeared first in five volumes. The Standard Reference Work appeared first in six volumes. The material in those was increased from time to time with additions, and the number of volumes increased up to the present number ten.

573 Q. How long have you had the present number?

A. In 1923 it appeared first in ten volumes, but two of those volumes were special teacher material. Last year the special teacher material was dropped from the set and the alphabetically arranged encyclopedia material was extended to fill ten volumes.

Q. Do I understand you to mean that the teacher material was entirely dropped from ten or was scattered through under other names?

A. It was entirely discontinued as part of the contents of the edition as now distributed.

Q. I noted in looking through one of the Standard Reference Works, Mr. Stanford, that the articles covering schools, colleges, and universities gave the number of students and the number of professors as of the year 1922, although the work bore the copyright date of 1927. Would you say that that article had or had not been revised?

A. That article which bore the date of 1922 was the 1923 edition. There was a very extensive remaking of plates in the year 1923, and a thorough revision of everything in the set.

Q. Yes.

A. The revisions of successive printings, chiefly 1925 and 1927, did not change all of the statistical data.

Q. I see. There is a man by the name of Iddings, Joseph Paxton Iddings, who was born in 1857, according to the article in the Standard Reference Works, and in that
574 edition bearing the copyright date of 1927, after his name there is no date purporting to represent his death, although it seems that the gentleman died in 1920. What would you say, Mr. Stanford, as to the revision in that case?

Mr. McKeag. I object, may it please the Examiner. I don't see that it is material. The apparent allegations are an attempt on the part of the Commission's attorney here to show that certain articles were not perhaps thoroughly revised. I don't know what his object is, whether it is to show that the work was antequated, but I object to him trying to show it by picking out a single article. It requires a study of the entire book, and unless counsel wants to go into that whole subject, I think it is entirely immaterial.

Examiner Averill. Mr. Winn, what portion of the complaint do you think covers a matter of that type?

Mr. WINN. It is in paragraph 2, subsection E, on page 4 of the complaint.

Examiner AVERILL. That would only go, would it not, to the question as to any misrepresentation that may have been made, if one was made, in regard to the book being copyrighted in 1926?

Mr. WINN. Not necessarily. There is also a clause in here to the effect that the respondents, by the use of prospectuses and otherwise, have represented that set of reference books or set of encyclopedias was recently completed.

575 Examiner AVERILL. The fact that they were recently completed would not tend to show that or to establish that the material contained in the book was not up to date. Counsel might attempt to prove that the books were not recently completed, and when I say recently, that refers to the 1926 date, were not recently published, but would attempt to prove that they have not been copyrighted in 1926—but I don't see that that is the case. The particular question is whether in some particular article in the books some data which someone might conceive should have been there was not there, and that is what this question is directed to.

Mr. WINN. If the Examiner will pardon me, he is using the word "completed"; does the Examiner refer in that case to completion so far as the printing is concerned, or completion so far as the writing and editing of the articles is concerned.

Examiner AVERILL. I take it you confuse subparagraph E with the reference to some alleged misrepresentation as to the publishing and copyrighting of the books in question.

Mr. WINN. My position is that it refers to the preparation of the articles, and to the time at which they were copyrighted.

Examiner AVERILL. It does refer to the time at which the article was copyrighted.

Mr. WINN. And to the preparation of the articles and to the effect that the articles were recently prepared.

576 Examiner AVERILL. Still, sir, even with that, that would not go to the point as to whether in some particular article the time of the death of a person was or was not given.

Mr. WINN. It would certainly tend to show if a man died in 1920 and the usual form of indicating that a man was still alive in a work of this kind were used, that the article concerning that man had been recently prepared, inasmuch as that man died in 1920, which would be five years prior to the copyright date that was in the pros-

pectus, and five years in a work of this kind would not be termed recent, therefore, so far as the work on that article is concerned, this set was not recently published.

Examiner AVERILL. It does not use the word "published" at all; it uses the word "completed."

Mr. WINN. I mean completed.

Examiner AVERILL. I take the word "completed" to mean, from the contract, the publication of the book, and not to deal with the fullness or the thoroughness with which each and every article contained therein may have appeared, or may have been prepared, I should say that, and the objection is sustained to the question.

(Discussion off the record.)

Mr. WINN. Does the Examiner mean that the word "completed", as used in the complaint in connection with the context therein, means the publication of the Stand-
577 ard Reference Work as it comes off the press, in other words, that each time a new run is made from the plates, that the Standard Reference Work is then and there newly completed?

Examiner AVERILL. I am not passing upon what would be the completed work. I am only passing upon the objection to that specific question, and that specific question called for an interpretation by his witness of an article which it appears from the question of counsel did not contain mention of the fact of the death of the parties to whom the article had reference.

Mr. WINN. Although the death of that party had occurred six years prior to the copyright date in the front of the prospectus.

Examiner AVERILL. That may be, but this allegation here to which we referred certainly does not charge this respondent with not properly preparing this matter contained in this encyclopedia; it charges them, as I take it, with representing that set of books or sets of encyclopedias were recently completed and had been copyrighted in 1926, when in truth and in fact such was not the case. I do not take the word completed as used in that context to refer to the fullness or completeness of each and every article which may have been contained in their books.

Mr. WINN. The attorney for the Commission is not taking that precise position, because it is conceivable and
578 common knowledge I think that ten volumes could be written on practically every subject that is in the Standard Reference Work. The position of the attorney for the Commission is merely that this is an article which is not incomplete, but it is not up-to-date, and therefore, tends to show that the article in question was not recently

completed and that, therefore, that portion of the encyclopedia was not recently completed and would tend to show that the representations which the respondent claims to have been made in order that such a work as this might be recently completed were not such as would authorize those persons selling the Standard Reference Work to represent that the work was recently completed, and were not such as would authorize the Standard Reference Work and the publishers of the Standard Reference Work to put in the front of their volume and in the front of their prospectus a copyright date which would represent to prospective purchasers that the work had been recently completed.

My question does not go to the completeness of the article, rather to the time at which it has been prepared.

Examiner AVERILL. Gentlemen, I see no charge in that paragraph of the complaint that this respondent was putting over on those prospective purchasers articles which were not up-to-date at the time of offering them to the public.

By Mr. WINN:

579 Q. Mr. Stanford, Commission's exhibit 83, which purports to be a prospectus of the Standard Reference Work, bears on the back of the title page the words "Copyright 1926 Standard Education Society." I think something was said in the answer about that, but would you mind stating whether or not either the Standard Reference Work or the prospectus were copyrighted in 1926?

A. May I refer to the wording of the answer?

Q. Yes. It is paragraph E on page 2.

A. That paragraph E states the precise situation, upon my investigation of the paragraph of the complaint in question in which our attention was called to the printing of that page in the prospectus with the 1926 date. The printer was instructed to put the publication date 1926 on the title page, put on the reverse side, and he on his own initiative changed the copyright date at the same time that he printed these prospectus leaflets.

Q. I know this is in the answer, but I want to get this in the record. I understand that the date 1926, purporting to represent the date in which the book was copyrighted was an error, and that the book was actually copyrighted in 1925 and later in 1927.

A. That is correct.

Examiner AVERILL. Well, the answer says—gentlemen, let's don't get the dates changed—says it was actually copyrighted in 1923 and recopyrighted in the year 1925.

580 Mr. WINN. Yes; and the witness has since testified that it has been recopyrighted again in 1927.

Examiner AVERILL. Yes; I understand him so to say.

By Mr. WINN:

Q. What date is represented as the copyright date in the prospectus now used, Mr Stanford?

A. I could not say without consulting that, but we endeavor to have the copyright date correspond, that copyright date in the prospectus correspond with the latest copyright date of new material added to those revised editions.

Q. So that if the copyright date is correct in the prospectus that is now being used, and if that is the date which you tried to have, it will be today, 1927; is that correct?

A. I would not say certainly, but I think so.

Q. The last time that the Reference Work was revised and copyrighted was 1927?

A. That is true of the edition that is being discussed here as distributed under that name.

Q. What is the National Encyclopedia, Mr. Stanford? You can refer to that answer again if you want to on that. I want to get this in the record.

A. In what paragraph do you find that? F?

Q. Yes.

A. The circumstances were approximately as follows: A man who had been connected with another somewhat
581 similar enterprise desired to operate as a dealer in the distribution of our set and we made a contract with him to put out an edition under a different name, which we would purchase and pay for under certain conditions within a limited period of time. He shows the name National Encyclopedia for this edition, and there was an edition of 5,000 printed from the plates of the Standard Reference Work. It was put out in a different binding, and was distributed at a somewhat less cost. This man, after selling about half of that edition, fell down on his contract and we had the goods on hand. We proceeded to put out some agents ourselves and took over some of the books he was distributing and gradually sold out the remainder of that edition.

When our attention was called by the Federal Trade Commission to the fact that there were complaints on this score, we consigned the distribution of the balance of the edition to Canada and Porto Rico. That edition has been entirely sold out now for some time and we made no reprinting.

Q. Has the Standard Reference Work ever been sold under any other name than the Standard Reference Work or Aiton's Encyclopedia up until the first of the year 1929?

A. It has not.

Q. Except the National Encyclopedia is the only time it has ever been done?

A. That is the only instance; yes.

582 Q. What is the Standard Extension University, Mr. Stanford?

A. That has no relation whatsoever to this book distribution. That is a wholly separate department owned by the Standard Education Society, under which we maintain a correspondence school in elementary business training.

Q. It is a department of the Standard Education Society, though?

A. It is.

Q. Do you know E. M. Walrath?

A. Right off-hand I don't recognize the name. It might be recalled to me by something more specific covering the gentleman.

Q. Did you ever have an employee of the Standard Education Society, whose name was E. M. Walrath or Walroth?

A. I don't recall the name.

Q. I show you a letter that has been introduced in evidence under date of November 2, 1928, on the letter head of the Standard Education Society, signed by that person. Are you familiar with that signature?

A. I don't recognize either the signature or the name. Since it is signed to a letter apparently emanating from the Standard Education Society, I would assume it was one of the young ladies employed in the office.

Q. Do you know an L. A. Williams?

A. Yes; I know who L. A. Williams is.

Q. I understand that is a lady. Who is she?

583 A. She is a correspondent.

Q. Of what?

A. She handles——

Q. I mean the Standard Education Society?

A. Yes.

Q. Is she also collection manager?

A. Oh, no.

Q. Is she in the collection department?

A. Yes.

Q. Her duties would cover writing letters to purchasers who had possibly become delinquent in their accounts seeking on behalf of the Standard Education Society to retrieve for the society the money which is owing to the Standard Education Society under the contracts that have been signed by the purchasers?

A. Yes; she writes and answers certain types of correspondence from subscribers.

Q. And she answers those letters on behalf of the Standard Education Society?

A. Yes.

Q. Do you know a Joseph E. O'Connell, suite 1708 Metropolitan Building, Chicago?

A. Oh, yes. He is an attorney that handles certain accounts for the United Publisher's Protective Association, which is a collection agency.

584 Q. Is the United Publishers Protective Association a child of the Standard Education Society?

A. I would say not.

Q. Is it a corporation?

A. I don't know whether they are incorporated or not.

Q. Do they collect accounts for the Standard Education Society?

A. Yes.

Q. And you say Mr. O'Connell is connected with them?

A. I think so. I have heard the name and I think he is.

Q. Do you know an R. M. Jackson?

A. R. M. Jackson is connected with another collection agency which handles some of our delinquent accounts, as I recall it.

Q. And that other agency is the Associated Credits of America?

A. Yes; that is right.

Q. What is the relation between the Associated Credits of America and the Standard Education Society?

A. Well, that concern and several others are collection agencies to whom we turn over delinquent accounts at times.

Q. For what purpose?

A. For collection.

Q. Here is a letter that has been introduced in evidence by the Commission and marked "Commission's Exhibit 33", a notice to a debtor from R. M. Jackson, vice president of Associated Credits of America, attorney in fact for creditor. Is that correct?

585 A. Yes.

Q. Would you say that is the relation that exists between the Standard Education Society and the Associated Credits of America, as it is stated in this letter?

Mr. McKeag. Read the letter.

Mr. Winn. R. M. Jackson, vice president Associated Credits of America, attorney in fact.

A. I am not so clear just what that means.

Mr. McKeag. I think that is explained.

Mr. Winn. He said that is correct.

Mr. McKeag. That he turned the account over to this concern for collection. That is all he had to do with it.

By Mr. Winn:

Q. And you did the same thing with Mr. O'Connell in connection with this collection organization?

A. I think so. Mr. O'Connell is not the manager of that Associated Credits—or the United Publishers Protective Association but I think he is an attorney for them—but he is not the United Publishers Protective Association itself, I am quite sure.

Q. At any rate, so far as you are concerned, it was perfectly proper for Mr. O'Connell to have your account against these persons and to attempt to collect them?

A. Yes. We have contracts with some of these collection agencies wherein they take these accounts that are as-
586 signed to them on commission on the collections that they are enabled to make.

Q. Do you know a Connell M. McDermot, at 109 North Dearborn Street, Chicago?

A. I do not recognize the name. I don't recognize that attorney's name.

Q. Can you find out whether or not he has represented your organization?

A. Sure; I think so.

Q. Do that, will you? Do you know a man by the name of H. H. Baggs in Lima, Ohio?

A. I never have met the gentleman, but I understand there is such a representative for the department of our business known as the "Standard Extension University."

Q. Do you know a G. Gordon, manager of the advertising department of the International Bureau of Research?

A. I recall nothing of that kind at the present moment. I would like to see that.

Q. Possibly it would not mean anything to you after you see it.

A. That is quite true. I see a name down here in the corner which I recognize.

Q. Just let me put this in first. You refer to Commission's exhibit 85, which purports to be a letter from G. Gordon, manager of the advertising department of the International Bureau of Research. See if that will help you refresh your recollection.

587 A. I do not recognize either this name or the company, International Bureau of Research, or the name G. Gordon at the bottom. I recognize this, however; the name here, that is Warren B. Davis.

Q. That is who it is addressed to?

A. Oh, yes. That is not what I thought it was. Then I don't recognize anything on that at all.

Q. Do you know a J. V. O'Brien?

A. Yes.

Q. Who is Mr. O'Brien?

A. J. V. O'Brien for a number of years, from 1920 to 1923, I should say, was a salesman for us in the teacher

department in distributing the Standard Reference Work.

Q. I believe you said that Mr. O'Brien had terminated his connection with the Standard Education Society in 1923, approximately.

A. Somewhere along about that time, and he was connected in some other lines for a time, and then later on, I should have said about 1926, he arranged to distribute as a dealer our work out of Los Angeles, and later San Francisco. He operated as an independent dealer, buying his books of us and distributing them in several of the States on the Pacific coast.

Q. Did you know G. G. Phelan?

A. I think that is a name of a collection manager,
588 a lady who was collecting for him in the San Francisco office. I never met her, but I have heard the name in that connection.

Q. Did you know an E. V. Olson?

A. Oh, yes; Mr. Olson bought out, he and a party bought out O'Brien's dealer agency on the Pacific coast.

Q. Do you know a Mr. F. J. McNamara?

A. McNamara is the associate of Earl V. Olson in handling the San Francisco dealer branch.

Q. Do you know Mr. M. Lovass?

A. Yes. That was a young lady in their office.

Q. I hand you Commission's exhibit 87, which purports to be a letter to Dr. Walter W. Schultz, and ask you whether or not you have ever seen the letterhead on which that letter was written before?

A. I don't recall having seen that letterhead. The correspondence with our office is not handled at my desk.

Q. Do you recall having seen such a letterhead as the letter which Commission's exhibit 86 purports to be a typewritten copy of?

A. I don't recall having seen such a letterhead.

Q. Do you know whether or not such letterheads come from the office of the Standard Education Society?

A. Right now I don't recall of the type of letterheads upon which they address our office. They were operating under the—operating by permission out there with
589 the name Standard Education Society of California, or some such arrangement like that, I don't recall.

Q. With home office Chicago, Illinois?

A. I believe that there was some such arangement made with the sales manager of our business. I didn't have anything to do with that arrangement.

Q. You know that they called themselves the Standard Education Society of California?

A. Yes; they distribute our books in our section and we did not while they were holding that territory, we had

nothing to do with their accounts; they purchased the books of us and handled their own accounts.

Q. Do you know a man by the name of Charles A. Knapp?

A. Yes.

Q. Does he have anything to do with the Standard Reference Work?

A. Knapp has operated for a number of years as a dealer purchasing the Standard Reference Work from us and distributing it to a certain class of subscribers.

Q. Do you know whether he sells any other company's publications with the possible exception of fiction works which were used in the combination sales which we just covered?

A. Knapp owns the Young Folks Library in twenty or twenty-one volumes, and he distributes that along with—that is, he distributes that separately or in combination with the Standard Reference Work.

590 Q. Approximately how active is he with regard to the number of sets sold of the Standard Reference Work?

Mr. McKeag. You mean about how many sets a month would he take?

Mr. Winn. No; I don't mean that, whether he is very active or comparatively inactive. I don't care to know the number.

A. He sells a good many books.

Q. Do you know whether or not he ever purports to give any of them away.

A. Why, some years ago he was getting out a letter and circularizing prospects, in which there was an implied offer of a gift.

Q. Do you know whether he was referring to the Standard Reference Work in that letter or not?

A. I presume he was. I don't know.

Q. It was not his Young Folks Library, so far as you know that he was talking about then?

A. I would think not at that time.

(Discussion off the record.)

By Mr. Winn:

Q. Do you know a person by the name of R. Kelly, Mr. Stanford?

A. I am afraid I would have to have my mind refreshed on that as to which Kelly. We have people working for us by the name of Kelly.

Examiner Averill. One moment, maybe he can re-
591 fresh you on this and it will save you a lot of discussion.

By Mr. WINN:

Q. I hand you a letter which is Commission's exhibit 47.

A. Yes. That is a young lady who works in the collection department in our office.

Q. Do you know an S. Anderson?

A. Let me see it.

Q. I hand you a paper marked "Commission's Exhibit 135."

A. That is a young lady working in the collection department.

Q. I believe you testified that the United Publishers Protective Association with its executive offices in the Metropolitan Building in Chicago handled some of your accounts; that is, took them on some sort of a basis whereby they attempted to collect them for you.

A. Yes; on a percentage collection basis.

Q. Do you know Harry H. Longenecker?

A. Yes.

Q. What is he?

A. He is manager of the United Publishers Protective Association.

Q. He and the agency of which he is manager handle some of those accounts for you?

A. Yes.

Q. Mr. Stanford, what is the Standard Encyclopedia Corporation?

Mr. MCKEAG. Is that in this complaint?

592 Mr. WINN. It may be. First, I will put my question——I will withdraw that.

Q. Are you connected with the Standard Encyclopedia Corporation?

A. Yes.

Q. In what capacity?

A. One of the incorporators.

Q. Do you hold an office therein?

A. I think—I should have to look up the record on that.

Q. You don't know whether you are president of that or not?

A. I am not certain. They possibly put me in as president.

Q. Mr. Stanford, I hand you a letter which purports to be from the Standard Encyclopedia Corporation, and ask whether or not that can refresh your memory as to whether or not you hold any office in the Standard Encyclopedia Corporation?

A. This would indicate that I was the president of that concern.

Q. That is not your signature, I presume?

A. No.

Q. That is a facsimile?
A. Yes, a stamp.
Q. Has the Standard Encyclopedia Corporation engaged in selling books?
A. I don't know just how to answer that. I would like to consult the office records on that.
Q. I will hand you another piece of paper which
593 possibly will possibly refresh your memory on that.
A. I might explain that I am not connected with the distribution end of this work at all.
Q. You are only connected with the publishing company?
A. Yes, with general administrative and publishing.
Q. But the Standard Education Society is engaged in distributing these books, are they not?
A. Which books?
Q. The Standard Reference Work.
A. It was engaged in distributing the Standard Reference Work at the time that all of this matter was covered.
Q. And you were the president of the Standard Education Society?
A. Yes, and am still.
Q. Yes, although your particular work was administrative rather than distributive, so far as these books were concerned?
A. Yes.
Q. Does the Standard Encyclopedia Corporation publish books?
A. I don't think so.
Q. Does the Standard Encyclopedia Corporation have anything to do with books?
Examiner AVERILL. With what books?
Mr. WINN. Any books.
A. I don't know just what to say about that without looking up the records.
Q. This piece of paper won't refresh your memory
594 any in that regard?
A. This is a very recent change in the activity of our corporation, and I would like to look into the precise situation before testifying to that.
Q. Before testifying to any extent at all, you mean?
A. Yes; I think so.
Q. That will be all right. Then first I think probably you can testify as to this: The Standard Encyclopedia Corporation is a different organization from the Standard Education Society?
A. Yes, sir; a different corporation.
Q. It is not a case of where the name of the Standard Education Society has been changed to the Standard Encyclopedia Corporation?

A. Oh, not at all.

Q. As was the case in Aiton's Encyclopedia to the Standard Education Society?

A. Not at all. The Standard Education Society is a different corporation.

Q. And the Standard Education Society is today still in existence?

A. Oh, yes.

Q. And the Standard Education Society, so far as you know, still publishes and sells the Standard Reference Work?

A. It is just possible that they may have some old sets or returned sets that they are still marketing.

595 Q. They are not publishing now, though?

A. No.

Q. Now, did you bring those letters, Mr. Stanford, that were covered in that notice?

A. Well, I find a situation there that makes it impossible to comply specifically with your request. We do not keep correspondence——

Q. I see.

A. On the subscriber's file card notations are made of the essential points in each letter that comes in, together with a notation of the meat of the response and the letters themselves are not kept. I found one exception, however, to that, in that there was one letter on the list that you submitted that was attached to the card.

Q. I see. May I have that one letter?

A. Yes [handing paper to Mr. Winn].

(Discussion off the record.)

Mr. WINN. Mr. Examiner, this letter purports to have been written by the witness after the witness testified in Towanda and is therefore not relevant to the witness' testimony there.

In view of the statement made by the witness that certain original letters to the Standard Education Society and that certain copies of letters from the Standard Education Society are not in the possession of the Standard Education Society, and that so far as the witness knows they have

596 been destroyed, I would like to have spread upon the record this notice of demand, which was served upon the respondent through its counsel, requesting the production of the letters mentioned therein.

Examiner AVERILL. It is so ordered.

(The notice of demand referred to is as follows:)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, ET AL.

NOTICE OF DEMAND

The respondent in the above-entitled cause is hereby notified that letters written by the following persons on the dates specified must be produced and made available to the Commission's attorney in charge of this case at the hearing on November 8, 1929, at room 2243, Transportation Building, 608 South Dearborn Street, Chicago, Ill., at 11:00 a. m.:

Letter from Lucile Cowles, Orwell, Pa., sent in the summer of 1928, probably in July or August.

Letter from Alice McAuliff, Towanda, Pa., sent in the summer of 1928, probably July or August.

Letter from Elwood E. Whitesell, Towanda, Pa., sent in the winter of 1927 or spring of 1928.

597 Letter from Lila Moravia, Ithaca, N. Y., sent in the winter of 1928–1929.

Letter from Eulena Frisbee, East Meredith, N. Y., sent January 10, 1929.

Letter from Ruth Allene Bailey, Ravena, N. Y., sent in the winter of 1928–1929.

Letter from Dorothy Chaffee, Fulton, N. Y., sent in October 1928.

Letter from Zella M. Parish, 601 North Tioga St., Ithaca, N. Y., sent April 9, 1927.

Letters from Eleanor R. Barnard, Ithaca, N. Y. All correspondence including letters sent to the respondent by witness and letters sent by the respondent to witness. Dates unknown.

Letter from Mrs. M. S. Weber, 1305 Sorb Ave. NW., Canton, Ohio, sent January 24, 1926.

Letter from Mrs. Onor (A. J.) Harris, Cleveland, Ohio. One letter sent latter part of December 1925, or early part of January 1926. Another letter sent January 11, 1926.

Letter from Mrs. Emma J. Schultz, 3458 North Cliff Road, Cleveland Heights, Cleveland, Ohio. Sent some time in 1926.

Letter from Mrs. E. E. Hill, Cleveland, Ohio. Sent December 8, 9, or 10th, 1925.

598 Letter from Mrs. John C. Whelan, 348 Melrose Ave., Toledo, Ohio.

Letter to Charles E. Knapp from Mrs. John C. Whelan and response thereto, December 1927 or January 1928.

Letter from Mrs. C. F. Horton, 2245 Glenwood Ave., Toledo, Ohio. Sent in the spring of 1926.

Letter from Mrs. Emma L. Rynder, 1026 Grand Avenue, Toledo, Ohio. All correspondence had with respondent including letters from witness to the respondent and letters from the respondent to the witness, all beginning approximately in the late summer of 1925.

Letter from Miss Ruth M. Greiner, 827 Navada St., Toledo, Ohio. Sent July 9, 1926.

Letter from Miss Alice Sterling, Red Wing, Minn. Sent in December 1923.

Secondary evidence being the recollections of the witnesses covering the contents of these letters has been introduced by the attorney for the Commission. Upon the letters mentioned above being made available to the attorney for the Commission at the time and place specified above, these letters will be introduced in evidence and the corresponding portions of secondary evidence already introduced will be stricken from the record.

FEDERAL TRADE COMMISSION.

OCTOBER 26, 1929.

599 Mr. WINN. Then, I think this covers everything for this morning.

Examiner AVERILL. There is one little thing I want to get straight upon so that I will know.

By Examiner AVERILL:

Q. Mr. Stanford, as I understood your testimony, it was the practice of your company to copyright from time to time, probably at intervals of about two years, new matter that was incorporated in your successive issues.

A. Correct.

Q. Now, in doing that, did you show on the prospectus, which, as I understand, is somewhat similar to the volume that has been introduced as Commission's exhibit 83, was it the custom to show on those only the last date of coyright, or was it the custom to show on the prospectus the preceding dates? As an example of what I mean, if certain portions of the matter contained in your encyclopedia or reference work had been copyrighted in 1923, and again in 1925, and again in 1927, was it the practice to show all three of those dates, or was it the practice just to show the last date of copyright on the prospectus?

A. Our most recent editions and prospectuses have had the dates 1923, 1925, and 1927 on them.

Q. You say most recent; from when would that start, what would you think?

600 A. I think 1923 is the earliest date that we are using on the latest edition, because that was the year of the extensive remaking of the plates.

Mr. McKeag. What he was asking was, when did you begin to show on the prospectuses the original copyright of 1923 and 1925 and 1927; how recently did you begin that practice?

A. I think that has been the custom right along except for this one error that I referred to, for 1926.

Q. Only in that prospectus?

A. I think so.

Examiner Averill. All right, then, gentlemen; that is all I want to ask.

Mr. Winn. Then, I would like to request an adjournment until 3'oclock.

Examiner Averill. Gentlemen, we will adjourn for lunch until 3 o'clock.

Whereupon an adjournment was taken until 3 o'clock p. m. of the same day, Friday, November 8, A. D. 1929.

601 Before the Federal Trade Commission

Docket No. 1574

In the Matter of Standard Education Society, et al.

Chicago, *November 8, 1929.*

Met pursuant to adjournment at 3:00 o'clock p. m.

Before Edward M. Averill, Examiner.

Appearances: Robert H. Winn (Washington, D. C.) for the Federal Trade Commission; Langworthy, Stevens, McKeag & McCornack, by James McKeag, for the respondents.

602 PROCEEDINGS

Mr. Winn. Shall we go on?

Examiner Averill. Yes, sir; proceed.

Harold M. Stanford resumed the stand and testified further as follows:

Direct examination continued by Mr. Winn:

Q. Mr. Stanford, with regard to the Standard Encyclopedia Corporation, is that organization engaged in publishing books?

A. Well, instead of answering that question specifically, I think I would like to explain just exactly the status of that corporation, if I may, in my own way.

Q. As far as I am concerned, that is all right, sir.

A. In the summer when we decided to eliminate the two volumes of teacher material that were in the old Standard Reference Work, which gave rise to our having called it the Standard Reference Work in the first place and not an encyclopedia, we extended the scope of the work and enlarged it to ten volumes of strict encyclopedic matter, and it seemed more appropriate that we should call it an encyclopedia. We liked the name "Standard" since we had always used it, and we decided to call it the New Standard Encyclopedia.

603 We intended at that time to change the name of the corporation, as we had done earlier, to Standard Encyclopedia Corporation, but there were complications on account of our banking arrangements and our financing, so that we could not do it at that time, but in putting out the new set under the name "New Standard Encyclopedia", we wanted to start at once to use the name "Standard Encyclopedia Corporation", so we applied to Springfield for the right to use that corporate name, and we were told that was available, so we were incorporated with the three present stockholders of the Standard Education Society as incorporators, in August, and we——

Examiner AVERILL. What year?

A. This last year, just a few months ago.

Examiner AVERILL. 1929?

A. Yes; August 1929.

And we got out new order blanks and started to distribute the new set under that name, New Standard Encyclopedia.

By Mr. WINN:

Q. You say that in the summer when you eliminated the two volumes of teacher work.

A. Yes.

Q. What summer were you referring to?

A. 1929.

Q. I thought that you testified earlier this morning, Mr. Stanford, that the two volumes of teacher work were

604 eliminated several years ago.

A. Oh, no. If you misunderstood me to say that, or understood me to say that, it was an error, because it was not eliminated from the new printing until this summer.

Examiner AVERILL. But I understood you to say that at the time you put out the Standard Reference Work in ten volumes at that time you eliminated the two volumes which contained the teacher work.

A. No.

Mr. WINN. In 1923 or 1925.

Examiner AVERILL. I don't remember the date.

A. It was in 1923, I think, that we expanded the work to ten volumes rather than the eight that had preceded it, and those two additional volumes were the teacher material, and it has been sold in ten volumes for the past six years, of which eight volumes were encyclopedic material and two were teacher material.

Examiner AVERILL. Now, I have got that straight.

A. Then this summer, as I stated before, we decided to eliminate the teacher material and changed the name to "Encyclopedia."

By Mr. WINN:

Q. Then I understand that except for the elimination of the teacher material the New Standard Encyclopedia is the same as the Standard Reference Work?

A. Except for such additions and corrections and
605 so forth as went into that edition in our customary manner of revision.

Q. So that it was revised and sufficient new material was added to constitute the work as ten volumes without the teacher work?

A. Without the teacher material; yes, sir.

Q. And that is what you are referring to this morning when you had practically the same question?

A. Yes.

Q. But you did revise and added sufficient material to fill two volumes really?

A. Not entirely, because the size of those ten volumes, the size of each of the present ten volumes is not as large as the original size.

Q. I see. You testified this morning that you were not sure but you believed you were the president of the Standard Encyclopedia Corporation. What can you tell me about that, sir?

A. That is the understanding.

Q. Yes.

A. You see, this Standard Encyclopedia Corporation is really at the present time a trade department of the Standard Education Society. The Standard Education Society is the financial entity and handles all of the business, owns everything, collects all the accounts and does everything of a financial character at this time, and will do so until such time as it is possible for us to change the name
606 of the Standard Education Society to Standard Encyclopedia Corporation. There is no different company fundamentally, there, nor is there any different people in charge. It is the same thing.

Q. It is the same thing except that it is different. The Standard Education Society as such is no longer publishing the Standard Reference Work then?

A. They are not printing any more of them, nor do they expect to. We expect to issue this publication under the one name. There are a few sets left of the last edition of the Standard Reference Work, and there are returned sets from time to time which are being distributed, but we propose to follow the policy of distributing this encyclopedia under but one name.

Q. And you propose eventually to change the name of the Standard Education Society to Standard Encyclopedia Corporation, at which time the two organizations will be actually merged?

A. Actually one.

Q. Now, as to the stock in the Standard Education Society, Mr. Stanford, who holds the other stock except your own and how much do they hold?

A. Up till quite recently there were quite a number of stockholders who were sales directors or managers or salesmen in the field that held some stock, but during the early part of this year that stock was gradually bought in, except for the shares that are held by myself, Mr. Ward, and Mr. Greener.

Q. So that at the present time there are only about 530 or 540 shares outstanding?

607 A. 536 shares.

Q. 536 shares?

Mr. McKeag. Greener has 35 instead of 40.

The Witness. Greener has 35 shares.

By Mr. Winn:

Q. Greener has 35 shares.

A. Mr. Ward has 250½. By the way, I want to ask this without any record here. Is this something that has to go into the record?

(Discussion off the record.)

By Mr. Winn:

Q. Is there any such organization as the National Encylcopedia Company with which you have anything to do, Mr. Stanford?

A. That is merely a trade department of the Standard Education Society.

Q. The National Encyclopedia Company is not a corporation?

A. No.

Q. Never was?

A. Never was, merely a name.

Examiner Averill. Now, then, gentlemen, we will suspend with Mr. Stanford for the present in order to take the testimony of the witness who is now to be called. Will you please be sworn?

608 CLARE ROZIKA was thereupon called as a witness and, having been first duly sworn, testified as follows:

Director examination by Mr. WINN:

Q. Give your name to the reporter, please.
A. Miss Clare Rozika.
Q. And the address?
A. 549 West Randolph Street, Chicago.
Q. Your occupation is what?
A. Executive secretary of the Concentrate Products Company.
Q. Did there come a time when a person purporting to represent the Standard Encyclopedia Corporation called on you?
A. Yes, sir.
Q. Approximately when was that?
A. The latter part of August, about the 26th I think.
Q. Of what year?
A. 1929, this year.
Q. And what, as nearly as you can recall, Miss Rozika, was its story?
A. Well, the gentleman's introduction was that as an introductory offer they were giving a free set of books, and the only consideration being, all we had to do was to write our name on a little memorandum that he showed me, saying that we approved of it and so on and so forth, and
609 that this offer included a reduced price on your Standard Encyclopedia and a choice of three sets of books which were later to be sold at a much higher price after these certain number of first introductory copies had been sold, and he showed us the material and we were not interested, and he had just about packed up and was ready to go when I asked him he could give us a little more time to consider the matter and call back, and he said no, that it was take it or leave it right now, that he was just a special representative and that when he was through with a particular area he was through and he was not making any call back.

Well, I looked the books over and thought that perhaps it was a bargain and signed what I thought was an ordinary purchase slip, and the slip was held for me and he handed me a copy and I signed it and paid a $5 deposit, and after he was gone I noticed the noncancellable clause, and I started out to get him and he was gone.

So then I looked in the telephone book for the name of the corporation and couldn't find any telephone number, and I began to be suspicious, and I called the office of the company and talked to a gentleman by the name of Mr. Ward, and he said that he would——

Q. I am afraid we better stop there. Suppose you tell us some more, Miss Rozika—he started talking about, saying that he had a free offer of some kind, as I understand.

610 A. Yes.

Q. I wonder if you would go into detail as to what his statements were in regard to that.

A. I don't remember whether I can recall that exactly or not, but it was this encyclopedia——

Mr. McKeag. No; just exactly what did he say?

By Mr. Winn:

Q. As near as you can recall, what was what he said or the substance of what he said.

A. Well, first of all he showed the books and said that with the books you got a research service, you were entitled to call on the research bureau for any information you wanted on any particular subject.

Q. Miss Rozika, you said it was a free offer; what were you to get free?

A. Well, these books.

Q. The books?

A. That is it.

Q. What books do you mean?

A. Well, a selected list of books that you were to choose from.

Q. Those were fiction, you mean?

A. Yes, sir; fiction.

Q. Were you to get any other kind of books?

A. Well, as I can recall that, you got inserts and things like that to add to the encyclopedia.

611 Q. You were to get an encyclopedia?

A. Yes.

Q. Was that a part of the free offer?

A. Well, whether that was part of the free offer or not, I don't know whether his words were construed to mean that.

Q. Were you to pay for anything?

A. Absolutely you paid.

Q. What were you to pay for?

A. Well, you paid for the encyclopedia and the research service and got these books free with it.

Mr. McKeag. Fiction books?

By Mr. Winn:

Q. Got the fiction books free?

A. Yes.

Q. You said you signed a contract. I hand you a paper and ask you whether or not you can tell me what that is.

A. That is exactly what I signed.

Q. You mean that is a copy of what you signed?

A. Absolutely.

Q. Where did you get that from?
A. From the salesman.
Q. He left that with you?
A. Absolutely.
Q. I wish you would read that over and see whether or not it refreshes your recollection as to anything the sales-
612 man might have said to you with regard to what you were to buy?
A. Well, not any more than I have already said.
Q. Were you to buy the Rheinhart and the Conrad and the Booth Tarkington books?
A. That was part of my order; yes.
Q. I know, you ordered that.
A. I am sorry I don't——
Q. That is all right, read the whole thing.
A. Ten volumes New Standard Encyclopedia, amount blank.
Q. How much were you to pay for the New Standard Encyclopedia?
A. This $89 I imagine.
Q. How much were you to pay for the ten-year quarterly revision service?
Mr. McKeag. The contract speaks for itself.
Mr. Winn. Well, we will let the contract right in as it is. I offer this contract in evidence and ask that it be marked "Commission's Exhibit 136."
Examiner Averill. Show it to Mr. McKeag, please.
(Discussion off the record.)
Examiner Averill. The paper will be received in evidence and marked "Commission's Exhibit 136", and the trial examiner takes the exhibit.
(Said document was thereupon received in evidence and marked "Commission's Exhibit 136.")

By Mr. Winn:
613 Q. I hand you a letter, Miss Rozika, containing two pages. Can you tell me what that is?
A. From the Standard Encyclopedia Corporation signed by the president, Mr. Stanford, to myself, acknowledging——
Q. The date?
A. Dated September 24, 1929.
Q. And you received this letter, did you?
A. Yes, sir; and it said——
Q. Never mind, it speaks for itself. You don't need to say what it says.
Mr. Winn. I offer this letter in evidence and ask that it be marked "Commission's Exhibit 137."

Examiner AVERILL. The paper in question will be received in evidence, and marked "Commission's Exhibit 137."

(Said document was thereupon received in evidence, and marked "Commission's Exhibit 137.")

By Mr. WINN:

Q. I hand you another paper, Miss Rozika, and ask you whether or not you can tell what it is.

A. Letter from the Standard Education Society signed by Mr. Noreus to myself dated September 16th.

Q. You received that letter?

A. Yes, sir.

Mr. WINN. I offer this letter in evidence and ask that it be marked "Commission's Exhibit 138."

614 Examiner AVERILL. The letter will be received in evidence and marked "Commission's Exhibit 138."

(Said document was thereupon received in evidence and marked "Commission's Exhibit 138.")

By Mr. WINN:

Q. I hand you another paper composed of two sheets, and ask you whether or not you can tell me what that is.

A. That is a letter I wrote to the Standard Education Society, attention of Mr. Noreus, dated September 18th.

Q. That is a copy, I take it, of the original letter?

A. Absolutely.

Q. It is a carbon copy made at the same time the original letter was typed?

A. Yes, sir.

Q. Did you mail the original of that letter?

A. Yes, sir.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 139."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 139."

(Said document was thereupon received in evidence, and marked "Commission's Exhibit 139.")

By Mr. WINN:

Q. I hand you another paper and ask you whether or not you can tell me what that is.

615 A. A letter from the Standard Encyclopedia Corporation to myself dated September 20th, signed by Mr. Noreus.

Q. And you received that letter?

A. Yes, sir.

Mr. WINN. I offer this in evidence and ask that it be marked "Commission's Exhibit 140."

Examiner AVERILL. The paper in question will be received in evidence and marked "Commission's Exhibit 140."

(Said document was thereupon received in evidence and marked "Commission's Exhibit 140.")

By Mr. WINN:

Q. Do you remember the name of the agent who called on you, Miss Rozika?

A. Mr. Davis.

Q. You said that you gave him $5?

A. Yes; deposit.

Q. Was that in cash or by a check?

A. That was cash.

Q. Have you ever paid anything more on the contract?

A. No; I have not.

Q. Did you get the books?

A. No.

Q. Were they sent to you?

A. Yes; they were, but I refused to accept them.

Q. Have you been released from the paper that
616 you signed by the company?

A. Apparently not, because they attempted delivery of the books a second time and I refused them again.

Q. Have you heard anything else which would indicate that they were not going to release you from your contract?

A. This afternoon I was served with a summons to appear in court.

Q. You were sued for the amount, summoned in a suit for the amount of these books?

A. Yes, sir.

Mr. WINN. I think those are all the questions I wish to ask Miss Rozika.

Mr. MCKEAG. No questions.

Mr. WINN. That is all, Miss Rozika. We are very much obliged to you.

Examiner AVERILL. Mr. Stanford, will you resume the stand, please:

HAROLD M. STANFORD resumed the stand and testified further as follows:

Direct examination (continued) by Mr. WINN:

Q. You testified that you were president, Mr. Stanford, of the Standard Education Society. Do you hold any other position in connection with that organization?

617 A. None.

Q. You are not general manager?

A. No.

Q. Are you a director?
A. Yes.
Q. How many directors are there?
A. Three.
Q. Who are they?
A. Mr. Ward, myself, and Mr. Greener.
Q. And you and Mr. Ward have exactly the same number of shares?
A. Yes.
Q. Who is Mr. Noreus?
A. That is a young lady who is one of the correspondents.
Q. Did you ascertain who Mr. or Miss Walrath is or was?
A. Yes; she was a correspondent with us, but is no longer in our employ.
Q. Now, as to the prospectus——
A. You asked me to bring in a prospectus.
Q. Yes. This is the one. What is that book, Mr. Stanford?
A. That is the prospectus that the agents have been using in selling the Standard Reference Work.
Q. It is a newer print than the copy which has already been introduced in evidence by the Commission?
A. I am not sure without thinking on that whether it is the same or not.
618 Q. There is one page that is different anyhow?
A. They reprint this from time to time.
Q. This page is different, that is what I mean.
A. Yes; that is the one that the mistake was made on.
Examiner AVERILL. When the witness says that is the one that the mistake was made on, he refers to Commission's exhibit 83.
A. Yes; that is the one in which the printer's error occurs with respect to the copyright, and as soon as we discovered that we authorized them to print new title pages and put them in the remainder of the editions, those title pages being of this character.

By Mr. WINN:

Q. Yes; and each year that——
A. And each year that we reprint the set, and in fact we reprint the set twice each year, we have the same date of publication in the prospectus that we have in the books, and we also use the same copyright dates which in this instance and it has been for some time now copyright 1923, 1925, and 1927.
Q. Is it not true, as a matter of fact, that this book was copyrighted also prior to 1923 and that it was revised in 1923 or 1922 just before the 1923 copyright?

A. These new copyrights do not grant us any extension of our original copyright on this material, and the blanks that we fill out and the copyrights that we get under
619 these datings specifically state that it covers only new material in the sets.

Q. Yes; but the Standard Reference Work was copyrighted prior to 1923?

A. It was.

Q. And then it was revised and recopyrighted several times prior to 1923?

A. Several times; yes.

Q. And then was again recopyrighted under the conditions that you have just outlined in 1923, 1925, and 1927?

A. Yes.

Q. Now, on the front title page appears in this prospectus which we have identified the date of 1927, and I understood you to say that it was reprinted sometimes twice each year.

A. The books are reprinted usually twice each year.

Q. But I understand you to say that the date in the title page corresponds to the last copyright date, or is it dated each year as the books are reprinted?

A. The date of the title page is the publication date, and it has no reference or no connection with the copyright date.

Q. Yes, that is true; this publication date is 1927?

A. Yes.

Q. Did you also have some books, not necessarily prospectuses, but possibly prospectuses and other books made with the date 1928?

620 A. Oh, yes; 1929.

Q. And 1929, too; yes. That is what I wanted to get.

The Standard Reference Work itself, was it copyrighted in 1929?

A. I would not be able to answer that certainly.

Mr. WINN. I offer this prospectus in evidence, and ask that it be marked "Commission's Exhibit 141."

Examiner AVERILL. The book in question will be received in evidence and marked "Commission's Exhibit 141."

(Said document was thereupon received in evidence and marked "Commission's Exhibit 141.")

Mr. WINN. There wasn't anything else that I recall that I wanted to ask. I think, Mr. Examiner, that so far as I am concerned, unless you have some questions——

Examiner AVERILL. I have no questions.

Mr. WINN. That that represents the case for the Commission.

Examiner AVERILL. Do you desire to cross-examine the witness, Mr. McKeag?

Mr. WINN. That is, unless Mr. McKeag desires to cross-examine. If he does not we will reserve the right to reexamine.

Mr. MCKEAG. Well, I hardly think I have any questions I want to ask right now. I want to review the evidence.

(Discussion off the record.)

Mr. WINN: The Commission's case is closed.

621 Examiner AVERILL. Gentlemen, counsel for the respondent not desiring to cross-examine, and the Commission having rested, the question now coming up as to when the respondent desires to introduce evidence on its own behalf, if it so desires, I would like to hear from Mr. McKeag on that.

Mr. MCKEAG. Well, I do not want to delay this any longer than I possibly can help. You know, I have been sick, and my matters have been accumulating, and I am only supposed to work about half time at the present time, and so I would like in the neighborhood of thirty or forty days, somewhere in there, to review the record. Probably some of it I won't get for about a week or ten days, so if I might have at least forty days, then I can advise you what evidence we want to put on, and I will say that it will not be very voluminous.

Examiner AVERILL. As I understand it, you desire to have the exhibits transmitted to the Chicago office, so that you may have an opportunity of going through them?

Mr. MCKEAG. I would like that.

Examiner AVERILL. I will arrange to have that done.

Now, I do not think it well to set a specific date right now, for the simple reason that my engagements, as I have a great many other cases on my docket, my engagements might conflict with any date that I could set right now, and I think we had best adjourn when we do adjourn to a date which is to be fixed later after communicating with counsel

622–623 for the respondent and counsel for the Commission and seeing what their engagements are. Will that be satisfactory?

Mr. MCKEAG. Very satisfactory to me.

Examiner AVERILL. Then, gentlemen, the taking of testimony in Chicago at this time having been concluded, we will adjourn to a date to be set later by the trial examiner and after conference with counsel for both sides.

(Whereupon an adjournment was taken subject to call.)

624 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY, A CORPORATION; STANDARD ENCYCLOPEDIA CORPORATION, H. M. STANFORD, INDIVIDUALLY AND AS PRESIDENT AND DIRECTOR OF STANDARD EDUCATION SOCIETY, AND AS PRESIDENT AND DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION; W. H. WARD, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION, AND AS SECRETARY AND DIRECTOR OF STANDARD EDUCATION SOCIETY; AND A. J. GREENER, INDIVIDUALLY AND AS DIRECTOR OF STANDARD ENCYCLOPEDIA CORPORATION AND AS DIRECTOR OF STANDARD EDUCATION SOCIETY

CHICAGO, ILLINOIS, *January 14, 1930.*

Met pursuant to notice, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn, Washington, D. C., for the Federal Trade Commission. Langworthy, Stevens, McKeag & McCornack, by James McKeag, for respondents.

625 PROCEEDINGS

Examiner AVERILL. It will be remembered that at the hearing in Chicago, November 8, 1929, and at the close of the taking of testimony on that day, the attorney for the Commission rested his case in chief, and that it was agreed that a time for the taking of testimony on behalf of the respondent would be determined upon later. Since that hearing the Commission has issued a supplemental complaint, bearing date December 4, 1929, which supplemental complaint adds as respondents Standard Encyclopedia Corporation; H. M. Stanford, individually and as president and director of Standard Encyclopedia Corporation; W. H. Ward, individually and as director of Standard Encyclopedia Corporation, and as secretary and director of Standard Education Society; and A. J. Greener, individually and as director of Standard Encyclopedia Corporation and as director of Standard Education Society.

Answers to the supplemental complaint have been filed by all the respondents and the case now comes on for the taking of testimony upon notice as to time and place for the taking of such testimony served upon counsel for the Commission and upon the respondents and upon counsel for the respondents. The attorney for the Commission will at this

hearing reopen his case in chief and present such evidence as he may deem material.

Mr. McKeag. I at this time make a motion to file an amended answer on behalf of A. J. Greener named
626 here individually and as director of the Standard Education Society and as director of the Standard Encyclopedia Corporation, the original answer being inaccurate in one respect.

Examiner Averill. Do I understand you have an amended answer already drawn?

Mr. McKeag. Yes. It is prepared and signed and ready for filing.

Examiner Averill. Any objection to that?

Mr. Winn. No objection on the part of the Commission.

Examiner Averill. Then, gentlemen, there being no objection, the amended answer will be received, subject to the approval of the Commission.

You may proceed.

Mr. Winn. I will call Mr. Stanford first.

H. M. Stanford was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. Winn:

Q. Your name, please.

A. H. M. Stanford.

Q. You have testified in this cause before?

A. Yes, sir.

Q. And at the time you testified before, I believe you stated you were president of the Standard Education Society?

A. Yes, sir.

627 Q. Do you still occupy that position?

A. Yes, sir.

Q. I believe you also stated you were president of the Standard Encyclopedia Corporation.

A. That is largely by courtesy, in that officers of that new incorporation were not formally elected.

Q. A letter was shown you at the hearing before, which had been signed—a letter on the letterhead of the Standard Encyclopedia Corporation, which had been signed H. M. Stanford, president.

A. I am willing to admit that.

Q. Your status has not changed since that time with relation to the Standard Encyclopedia Corporation?

A. No.

Q. You testified at that time you were a director of the Standard Encyclopedia Corporation?

A. Yes.

Q. Do you still retain that position?

A. Yes.

Q. You testified before, Mr. Stanford, that you held in your name 250½ shares of stock in the Standard Encyclopedia Corporation, is that correct?

A. I am afraid that is an error. I do not recall any such testimony.

Q. For the purpose of refreshing your recollection,
628 Mr. Stanford, I will show you a transcript of the testimony given at that time.

Examiner AVERILL. What page?

Mr. WINN. On page 563.

By Mr. WINN:

Q. Is that your answer to the question asked on page 562?

A. What corporation were we discussing at that time?

Q. Discussing the Standard Education Society. We had not mentioned the Standard Encyclopedia Corporation.

A. Yes; but, Mr. Winn, you have just asked me now about the 250½ shares, and you refer to the Standard Encyclopedia Corporation.

Q. I beg your pardon. Is that what I asked?

A. Yes.

Q. I will withdraw the question. At that time you testified you owned 250½ shares of the Standard Education Society.

A. Yes; correct.

Q. Do you still own 250½ shares of the Standard Education Society stock?

A. That number of shares stands in my name on the books of the corporation still.

Q. You testified at that time that there were 536 shares of stock outstanding.

A. Yes.

Q. In the Standard Education Society?

A. Yes.

629 Q. Mr. Stanford, how many shares of stock are outstanding in the Standard Encyclopedia Corporation?

A. That stock has not yet been issued.

Q. Is there any stock at all outstanding in that organization?

A. There is not.

Q. Was it formed as a stock company, as a stock incorporation, or was it formed as an eleemosynary institution, a corporation without profit?

A. That is correct.

Q. It was formed then as a corporation not organized for profit?

A. Yes.

Q. You testified at the prior hearing, Mr. Stanford, that ultimately the two corporations would be merged; is that so? Do you recall that?

A. I would not say that that was quite the testimony, Mr. Winn.

Q. Would you rather I find that for you?

A. I would be glad to have you.

Q. On page 606 of the record, Mr. Stanford, is your testimony to which I refer.

A. At the time that this Standard Encyclopedia Corporation was contemplated we wished to get possession of that name and have it tied up with our enterprise until such time as we might want to use it, and therefore we incorporated under that name, not for profit, to hold the name until
630 such time as it seemed best for us to change the name of the Standard Education Society, if ever, to the Standard Encyclopedia Corporation.

Q. The Standard Encyclopedia Corporation, as I understand it, Mr. Stanford, then is engaged in the publication of the Standard Encyclopedia; is that correct?

A. It is handling the distribution of it under an arrangement with the Standard Education Society, who finances the manufacture and distribution and reaps such profit as may be in it at this time.

Q. The Standard Encyclopedia is sold in interstate commerce, is it not?

A. Yes.

Q. Are you familiar, Mr. Stanford, with the New Standard Reference Work, published by the S. L. Weedon Publishing Company?

A. Years ago I knew a publication by that name sold by F. E. Compton Company of Chicago, and I am told that they sold the old plates to this Weedon Company in Cleveland, Ohio. I have not seen any of the sets distributed by Weedon, nor have I heard anything of it for a number of years.

Q. Is the Standard Encyclopedia Corporation engaged in competition with other organizations publishing similar works to the Standard Encyclopedia Corporation?

A. Mr. Winn, the word "competition" as applied to the distribution of encyclopedias through individual
631 agents hardly seems to me to come under the head of competition in the ordinary trade sense.

Q. That, of course, is not an answer. I will change the form of the question so that you will probably be able to answer it more easily. There are other books of a similar type to the Standard Reference Work and the New Standard Encyclopedia, which are sold in interstate commerce,

the agents for whom compete with the men who distribute and sell the Standard Encyclopedia and the Standard Reference Work up until such time as it ceased being published, in generally the same localities where your books are sold, is that correct? I don't want to quibble over the word "competition."

A. If by competition you mean that people engaged in somewhat similar activities are attempting simultaneously to secure orders for their product, I should question whether these subscription book publishers could be considered strictly competitors.

Q. Leaving aside the conclusion, Mr. Stanford, as to whether or not they are considered competitors, if my question was in such a phrase as understandable, could you answer it?

A. Yes.

Q. If I were to reword the question you could answer it?

A. All right, go ahead.

Q. There are other subscription book companies who are selling books all over the country, is that true?

632 A. I understand so.

Q. And those books are similar books to yours; that is, they are reference books, they are encyclopedias, or they are alleged to be reference books or they are alleged to be encyclopedias, is that correct?

A. I will answer that yes.

Q. And you sell your books in interstate commerce also?

A. Yes.

Q. That is, they are sold through your agents in interstate commerce?

A. Yes.

Mr. McKeag. Through the agents of the Standard Education Society?

The Witness. I would like to have that made clear on this record, that I am speaking for myself, as distributor of these works, in answering the questions in that way. I am speaking as an officer of the Standard Education Society.

By Mr. Winn:

Q. You said you understood these other companies were engaged in selling and distributing these books all over the country.

A. I do not recall ever having seen any of them make sales.

Q. No, that is probably true. Have you ever felt the result of their sales in the sales made by the Standard Education Society or the Standard Encyclopedia Corporation?

633 A. We have had sales killed, after we have made them, by representatives of some of these other com-

panies, on the representations to our subscribers that we were in ill repute with the Federal Trade Commission who were attempting to put us out of business.

Q. And that has happened in various parts of the country?

A. Quite extensively some years back.

Q. You stated in your testimony before, Mr. Stanford, that a man by the name of Swor had been connected with your Standard Education Society in distributing and obtaining orders for the Standard Reference Work and that he had left your employ and was subsequently reemployed, and that after he had first left your employ you discovered that his work had been unsatisfactory. Do you recall that?

A. Yes; I recall the testimony.

Q. In what regard was his work with you unsatisfactory at the time he was first employed, Mr. Stanford?

A. As I recall it, it was a case of his misrepresenting to his prospective purchasers that certain other people were purchasers of the work or were advocating its purchase by these proposed subscribers.

Q. Mr. Stanford, you testified at the hearing held in November, that in letters written in the Standard Education Society to educators and others who were requested to review certain articles to be placed in the Standard
634 Reference Work, that they would be listed in the work as contributors or as reviewers. Do you recall that testimony?

A. Yes.

Q. I show you a letter which is marked "Commission's Exhibit No. 120" and addressed to Mr. F. W. Ballou, superintendent of schools in Washington, and ask you whether or not that is generally the type of letter to which you were referring, or whether it is an exception to the general line of letters?

A. In 1923 when we set out to secure the review of a large part of our work in a contemplated revision, we wrote letters each week to a group of educators or others over the country. There probably were four or five hundred of those sent out. I found that one lot sent out one week failed to have in it the paragraph which we usually included and which should have been included in every instance, which reads something as follows:

"In recognition of your services in this matter we would be pleased to include your name among our list of contributors and reviewers."

I have had called to my attention a number of letters similar to this one, all sent out during the same week in May, 1923, in which that sentence was omitted.

Q. You testified at the hearing in November also, Mr. Stanford, that subsequent to the general revision in 1923, the revisions of successive printings did not change all of the statistical data; do you recall that testimony?

635 A. Yes. Not all of it was changed.

Q. Yes; not all of it.

A. At those times.

Q. What other portions, if any, of the Standard Reference Work were not brought strictly up to date in the revisions subsequent to the general revision of 1923?

A. I cannot speak very specifically as to that. It is our policy to go over the work and inspect it carefully before each printing for manifest errors or omissions or where there are additional dates which would tend to render the article more complete and up to date and include such changes in the manuscript for their revision.

Q. The revisions subsequent to 1923, I understood from your testimony were not as searching or as complete as the general 1923 revision, however?

A. No; until this present year, when we have gone over it much more closely, and the edition now in the press is more nearly comparable in its revisions with the 1923 than those of 1925 and 1927. I might say that the books are in press usually twice each year and there are some changes made prior to each time that we put them on the press, but which are not sufficiently numerous or important to warrant us in considering it an extensive revision.

Q. Now, in order to clear up what was apparently a minor inconsistency, Mr. Stanford, at the hearing in Novem-

636 ber you testified on page 559 of the record that the name of the work was changed from Aiton's Encyclopedia to the Standard Reference Work on April 1, 1912. You then stated on page 602 of the record that in the summer—and you are referring to the summer of 1929—you decided to eliminate the two volumes of teacher material that were in the old Standard Reference Work, which gave rise to your having called it a Standard Reference Work in the first place and not an encyclopedia, and on page 604 you testified that it was in 1923 that you expanded the work to ten volumes rather than the eight that had preceded it, and those two volumes were the teacher material, and it has been sold in ten volumes for the past six years, of which eight volumes were encyclopedic and two were teacher material.

A. I think those statements are essentially correct.

Q. How do you explain that?

A. The first edition under the name of Standard Reference Work in 1912 had a partial volume of teacher material

in it. This was expanded until a few years later it included a full volume, and it was not until 1923 that the set was expanded to eight full volumes of encyclopedic material and two volumes of teacher material.

Q. Mr. Stanford, during the time that the Standard Reference Work was available for sale, what was the authorized price for it alone?

Mr. McKeag. At what time?

637 A. Do you want a recital of all these various prices from 1912 down?

By Mr. Winn:

Q. No; I am referring to the time during which it occupied ten volumes, for the three years immediately preceding the publication of the Standard Encyclopedia.

Mr. McKeag. That would be from 1926 to 1929.

Mr. Winn. Yes.

The Witness. During that interval we put it out in two bindings; the Medallion Artcraft binding was furnished together with the ten-year loose-leaf extension service for $69.50. We had a cheaper binding which we distributed at $49.50, but in a much more limited way.

By Mr. Winn:

Q. Is the Standard Encyclopedia now on the market?

A. It is.

Q. And are the men who are engaged in selling that, generally speaking, the same men who were selling the Standard Reference Work?

A. Practically all of the men who distributed the Standard Reference Work are now selling the New Standard Encyclopedia.

Q. Has any change been made as to the orders or in the orders which have been given to the men engaged in selling the Standard Encyclopedia from the orders given

638 those same men at the time they were selling the Standard Reference Work, with regard to representations and other practices which are the subject of the complaint in the instant case?

A. When you use the word "orders" there, do you mean the order blanks that are given them or the instructions that are given them?

Q. No; I mean the instructions that are given them by the company.

A. I could not say as to that. I do not handle salesmen.

Q. Has the policy of the Standard Education Society changed at all as to the representations or misrepresentations or other charges made in the complaint?

Mr. McKeag. I object to that. That is rather a conclusion. It is a pretty broad question. That is what the examiner is to find from the evidence submitted.

Examiner Averill. Objection sustained, gentlemen, to the form of the question.

Mr. Winn. Before you sustain that objection, Mr. Examiner, if you please, I think that calls for a fact rather than a conclusion.

Examiner Averill. If you let the reporter read the question to you, I think you will see yourself the vice in it that I see in it.

Mr. Winn. Would you read it, please, Mr. Reporter?

(Record read as above recorded.)

639 Mr. Winn. I will change that.

By Mr. Winn:

Q. Is the policy of the Standard Encyclopedia Corporation in the sale of standard encyclopedias any different with regard to the representations or misrepresentations or other charges in the complaint from the policy of the Standard Education Society?

Mr. McKeag. I object to that.

Examiner Averill. Objection sustained, gentlemen.

(Off the record.)

(Discussion outside the record.)

By Mr. Winn:

Q. Is the policy of the Standard Encyclopedia Corporation with regard to the selling methods and representations in and about the sale of the Standard Encyclopedia any different from the policy of the Standard Education Society with regard to the same things in the sale of the Standard Reference Work?

A. I cannot say as to that, since I do not handle the sales.

Q. You are, however, a director of the Standard Encyclopedia Corporation?

A. Yes.

Q. And president of the Standard Education Society?

A. Yes.

Q. And as much of a president as the Standard Encyclopedia Corporation has?

640 A. I think I am all that they have at the present time.

Q. Mr. Stanford, what is the price today for the business course in the Standard Extension University?

A. I cannot say that I have seen any of those orders for quite a time. I do not recall.

Mr. Winn. I think those are all the questions I have to ask, Mr. Stanford.

Mr. McKeag. No cross-examination.

Examiner Averill. Thank you, Mr. Stanford. You are excused.

(Witness excused.)

Mr. Winn. Mr. Ward, please.

W. H. Ward was thereupon called as a witness, and, having been first duly sworn, testified as follows:

Direct examination by Mr. Winn:

Q. Give your name, please, sir, to the reporter.

A. W. H. Ward.

Q. And your address is what?

A. Home address.

Q. Is it Chicago, Illinois?

A. Chicago, Illinois; yes.

Q. What is your occupation, Mr. Ward?

A. I am secretary of the Standard Education Society.

Q. That is the same organization which is one of
641 the respondents in the case now pending?

A. I believe so.

Q. Are you also a stockholder of the Standard Education Society?

A. I am.

Q. How many shares of stock do you hold, sir?

A. 250½.

Q. Are you also a director of the Standard Encyclopedia Corporation?

A. Well, I do not know that any formal action has been taken in regard to directors. I believe I am one of the original incorporators.

Q. How many original incorporators were there?

A. Three.

Q. And who were they?

A. Mr. Stanford, Mr. Greener, and myself, I believe.

Q. What do your duties particularly involve as secretary of the Standard Education Society?

A. Well, I might be termed director of sales, or something like that. I really have charge of most of the sales work.

Q. Does the Standard Education Society handle the sales of the New Standard Encyclopedia, which is the publication of the Standard Encyclopedia Corporation?

A. Well, I should say that is pretty much true. It is done under the same management to a great extent.

642 Q. Is it the policy of the Standard Education Society or the Standard Encyclopedia Corporation, in connection with the sales methods and representations in and about the sale of the Standard Encyclopedia any different

from the policy with regard to the things in connection with the Standard Reference Work?

A. Well, without acknowledging there has ever been anything wrong with the sales policy——

Q. I am not asking you to do that, Mr. Ward. I am not asking you to do that, sir.

A. Well, I was merely attempting to answer your question by prefacing it with that remark.

Q. All right, go right ahead. I was just merely interrupting when possibly I should not have.

A. I will say that we have been especially careful to see that the sales policy of the Standard Encyclopedia is above reproach.

Q. You say you have been more careful in that regard in connection with the Standard Encyclopedia than you were previously with the Standard Reference Work?

A. I am not saying that, but, if possible, I would say that we have been perhaps even more so.

Mr. McKeag. I think, may it please the Examiner, this is a rather unusual method of proving anything pertaining to this case. Let him ask him what exactly their sales
643 policy is and how they carry it out and let him explain it, and then if he wants to know what he did prior to selling the Standard Education Society books they can compare it and see whether or not they are attempting to comply with the law in all respects.

Examiner Averill. Gentlemen, I fear an answer to the question, a direct answer, would state, if such answer were given, that the policy of the Standard Encyclopedia Corporation in regard to its sales was the same as the policy pursued by the Standard Education Society in connection with its sales of its reference work—I doubt if from that answer, if such answer were given, we could form any just idea as to what the policy of the new company or even of the old one was. I mean to say, it would leave us in the position where we would still be in grave doubt and where if one had to make a finding in connection with that they would be very much embarrassed to do so with such meager information as that is, because we have no clear-cut statement, as I recall it, in the record at any one place as to what was the policy of the Standard Education Society.

Now, if there is a clear-cut thing there and it can be shown, the witness can then be asked if that is the policy now pursued, instead of putting all that in the record again, but if we attempt to find out what the policy of the Stand-
ard Education Society, in connection with the sale of
644 their Standard Reference Work, is, we have got to pick it out through the entire record, and I do not

think this gentleman has been present at all of that testimony, and if he had, he could not remember all of it. I cannot see where its probative value would come in. I know it will take longer the other way, but the other way is much more satisfactory.

By Mr. WINN:

Q. Mr. Ward, do you know how many shares there are outstanding of the Standard Education Society?

A. Well, I could perhaps figure it out. I cannot just say offhand.

Q. Do you know who all the persons are who hold stock in the Standard Education Society?

A. Yes.

Q. Who are they?

A. Mr. Stanford, Mr. Greener, and myself own all the outstanding stock.

Q. Mr. Stanford has testified he owns 250½ shares.

A. Yes.

Q. And you have testified you owned 250½ shares.

A. Yes, and I think Mr. Greener owns 35, if I am not mistaken.

Q. Thirty-five?

A. That would make it all, yes.

Mr. WINN. Those are all the questions I have to ask Mr. Ward.

645 Mr. MCKEAG. That is all.

Examiner AVERILL. That is all, Mr. Ward, thank you.

(Witness excused.)

Mr. WINN. Mr. Greener, take the stand, please.

A. J. GREENER was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. WINN:

Q. Give your name to the reporter, please.

A. A. J. Greener.

Q. And you reside where?

A. Chicago.

Q. And what is your occupation, Mr. Greener?

A. I am an employee of the Standard Education Society?

Q. Do you own any stock in the Standard Education Society?

A. Yes.

Q. How many shares do you hold?

A. Thirty-five.

Q. Are you a director of the Standard Education Society?
A. No, sir.
Q. Have you ever been?
A. No, sir.
Q. Are you a director of the Standard Encyclopedia Corporation?
A. No, sir.
Q. Have you ever been?
646 A. Yes, sir. I was one of the incorporators at the time, and a short time after that I resigned as a director.
Q. Approximately when did you resign as a director?
A. I do not recall exactly. Some time in November, I believe, the early part of November, I believe it was.
Q. You heard the testimony of both Mr. Ward and Mr. Stanford to the effect that each holds 250½ shares of stock in the Standard Education Society?
A. Yes, sir.
Q. And that that is all the stock with yours that is outstanding?
A. As far as I know, that is correct.
Mr. WINN. Those are all of the questions I have to ask, Mr. Greener.
Mr. MCKEAG. No questions.
Examiner AVERILL. Thank you, Mr. Greener; you may be excused.
(Witness excused.)
Examiner AVERILL. Do I understand then there are 538 shares.
Mr. WINN. 536.
Mr. MCKEAG. 536, yes.
Examiner AVERILL. 536 shares in all?
Mr. MCKEAG. Yes.
Examiner AVERILL. Is that all for you?
647 Mr. WINN. That is all I have.
Examiner AVERILL. Anything more today, Mr. McKeag?
Mr. MCKEAG. No, sir.
Examiner AVERILL. In order to give counsel for respondents and his clients opportunity to confirm its action with a proposed stipulation as to the admission of evidence heretofore taken, we will adjourn until two o'clock, Friday, the 17th of January.
(Whereupon, an adjournment was taken until 2:00 o'clock p. m., Friday, January 17, 1930.)

648 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

CHICAGO, ILLINOIS, *January 17, 1930.*

Met pursuant to adjournment, 10:00 o'clock a. m.

Before EDWARD M. AVERILL, Examiner.

Appearances: Robert H. Winn, Washington, D. C., for the Federal Trade Commission; Langworthy, Stevens, McKeag & McCornack, by James McKeag, for respondents.

649 PROCEEDINGS

Examiner AVERILL. In the interim between the hearing on the 14th and today, counsel for the Commission and counsel for the respondents have been engaged in preparing a stipulation relating to the use in this cause of the testimony heretofore taken, and a stipulation has been prepared and signed by the respondents through their attorneys, which stipulation is to be submitted to the Commission for approval.

If and when this stipulation is approved by the Commission, then by the terms of said stipulation the Commission will rest its case in chief. As soon as the trial examiner is advised of the acceptance of said stipulation by the Commission, he will then arrange to have forwarded to the Chicago office, where it will be available to counsel for the respondents, the record in this case, including the exhibits, and counsel for the respondents will be allowed a reasonable time in which to examine the record and the exhibits, and thereafter the trial examiner, after communicating with the attorney for the respondents, will set a date for the taking of such testimony as the respondents may desire to introduce.

This matter is adjourned subject to call.

(Whereupon, the hearing of the above-entitled matter was adjourned, subject to call.)

650 BEFORE THE FEDERAL TRADE COMMISSION

Docket No. 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

CHICAGO, *March 6th, 1930.*

Met pursuant to notice, 10 o'clock a. m.

Before EDWARD N. AVERILL, Examiner.

Appealances: Robert H. Winn, Washington, D. C., for the Federal Trade Commission. Langworthy, Stevens, McKeag & McCornack, attorneys for the respondents, represented by Mr. James McKeag.

651 PROCEEDINGS

Mr. McKeag. On behalf of the respondents, and each of them, I move that all evidence in the record giving conclusions and impressions and feelings of the respective witnesses be stricken from the record, as same is not within the function of the witness, wherever the same may appear in the record, the particular evidence to be amplified by memorandum to be furnished by myself, so that the examiner and the Commission may properly rule upon it.

Examiner Averill. Counsel for the respondents will be given fifteen days from the close of the taking of testimony in Chicago in which to file a paper specifically setting out the evidence which is covered by this motion.

Harold M. Stanford was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. McKeag:

Q. What is your name?

A. Harold M. Stanford.

Q. Where do you reside?

A. 2411 Lincoln Street, Evanston, Illinois.

652 Q. What is your business?

A. Publisher.

Q. Are you connected with the Standard Education Society and the Standard Encyclopedia Corporation?

A. Yes.

Q. What is your connection with those companies?

A. President of them.

Q. Except as the chief presiding officer of those companies, are you engaged in business individually?

A. In this line, do you mean?

Q. In this line.

A. No.

Q. All of your activities are confined as president on behalf of these respective corporations, is that correct?

A. That is correct.

Q. Do you in your individual capacity have anything to do with the employing of salesmen or handling the accounts—sales accounts—of the Standard Education Society or the Standard Encyclopedia Corporation?

A. No.

Q. Do you know Charles E. Knapp?

A. Yes.

Q. How long have you known him?

A. Sixteen years.

Q. Has he ever been employed by the Standard

653 Education Society or by the Standard Encyclopedia

Corporation or by any of the officers of the company, so far as you know, by any of them?

A. No.

Q. What have been his relations with the Standard Education Society in the past?

A. He is a dealer in the distribution of books and has purchased and paid for sets of books published by the Standard Education Society.

Q. Does he handle any other books or publications aside from those of the Standard Education Society?

A. Yes.

Q. Do you know at the present time or for the past year or more what books he has been handling?

A. He owns the Young Folks Library in twenty-one volumes, and distributes that. He also distributes a standard history in some ten or twelve volumes for a publisher in Cincinnati.

Q. He is handling those as a dealer on the same basis on which he is handling your books?

A. I understand so.

Q. And does the Standard Education Society have any control or anything to do with the various agents employed by Charles E. Knapp?

654 A. Nothing whatever.

Q. At one time did you have some arrangement with Charles E. Knapp whereby he turned over certain accounts in payment of books?

A. Yes.

Q. Explain exactly what that arrangement was, and when it was changed.

A. His contract with us provided that he pay for all of the books we delivered to him during any months by the 10th of the succeeding month, but up until a year ago last January he had the privilege of turning in to us his accounts receivable for collection by us in liquidating his indebtedness to us in the purchase of books.

Q. And what change was made in January, 1929?

A. We accepted a cash settlement from him on the tenth of each month, or a series of notes in part settlement of his account, but we did not take over, since January, 1928, any accounts of his for collection.

Q. Is that 1928 or 1929?

A. 1928.

Q. It would be two years ago last January?

A. I will change that. It was January 1st, 1929.

Q. Now, with reference to the San Francisco office maintained by the gentleman out there, what are the existing relations between that office and the Standard Education Society, the respondent here?

655

A. They are dealers and distribute our books on the Pacific coast and immediate contiguous territory, and pay us in cash for the goods that they order from us.

Q. Are the various employes of that office employes of the Standard Education Society, the respondent here?

A. No.

Q. Do any of the respondents here employ those agents at all?

A. No, we know nothing of their agents.

Q. And do you have any control over them or know what they are doing?

A. None whatever.

Q. All the literature distributed by them, is that furnished by any of the respondents in this proceeding?

A. I cannot say as to that.

Q. Do you furnish them with the subscription blanks and letters of introduction and things of that kind, introductory letters, rather?

A. I do not know just how that is carried on.

Q. Who would know from your company, if anyone?

A. I think Mr. Ward, director of sales, would know.

Mr. McKeag. I now offer in evidence as respondents' exhibit no. 1, previously marked "Respondents' Ex-
656 hibit No. 1" for identification, the letter of November 9, 1922, addressed to G. A. Colberg, Standard Education Society. That is the one that was identified by the librarian and secretary when she was on the stand.

Examiner Averill. Yes, it was identified and marked for identification at that time. The paper in question may be received in evidence and marked "Respondents' Exhibit No. 1."

(Said document was thereupon received in evidence and marked "Respondents' Exhibit No. 1.")

By Mr. McKeag:

Q. Mr. Stanford, I show you a letter of E. E. Whitesell, from Towanda, Pennsylvania, dated June 24, 1929, and ask you how you came to receive that.

A. This came through the mail and was placed on my desk in the office.

Q. Received by the Standard Education Society in the usual course of business?

A. Yes.

Mr. McKeag. I wish to offer this in evidence. My only object in offering this communication as an exhibit is for the purpose of showing the extremes to which people will go to evade their contractual obligations when they have no legal excuse therefor, and for the purpose of discrediting the testimony of the witness E. E. Whitesell.

657 Mr. WINN. I have no objection to it being received for that purpose.

Examiner AVERILL. The paper in question will be received in evidence and marked "Respondents' Exhibit No. 3."

(Said document was thereupon received in evidence and marked "Respondents' Exhibit No. 3.")

By Mr. MCKEAG:

Q. Now, are you familiar with the account of Mr. E. E. Whitesell, of Towanda, Pennsylvania?

A. Yes.

Q. And do you know when this account was originally opened?

A. It appears from the record that this account was dated January 1st, 1927.

Q. And did you have any communication from him after that date prior to the receipt of this letter here offered in evidence as exhibit 3?

A. There is no evidence in the office record of communications from him.

Q. Did he make his payments regularly up to that time, fairly regularly?

A. Fairly regularly.

Q. And what was the original amount of his contract?

A. $69.50.

Q. And how much was due? What was the balance
658 due on this contract in June 1929?

A. $15.99.

Q. Now, with reference to the Bankers Investment Company of Indianapolis and Mr. McBride, has anything occurred with reference to an adjustment of this account since that time, since he appeared as a witness, I mean?

A. Following our agreement with him, immediately after the previous hearing and his testimony, Mr. McBride was paid back the money that he had paid the Standard Education Society previously.

Q. I show you a document marked "Respondents' Exhibit 2" for identification and ask if that is the contract that was delivered to your office, signed by the Bankers Investment Company?

A. It is.

Mr. MCKEAG. I offer that in evidence.

Mr. WINN. No objection.

Examiner AVERILL. The paper in question will be received in evidence and marked "Respondents' Exhibit No. 2."

(Said document was thereupon received in evidence and marked "Respondents' Exhibit No. 2.")

By Mr. McKeag:

Q. Do you know approximately how many salesmen are employed by the respondents, Standard Education Society and the Standard Encyclopedia Corporation?

659 A. During an entire year there are as many as four to five hundred different salesmen that do some business for the company.

Q. And about how many are continuously employed? What is the average?

A. From a hundred to a hundred and fifty.

Q. And who has supervision of these salesmen?

A. In the distribution of the books, Mr. W. H. Ward has charge.

Q. And do you have any complaints from subscribers to contracts as to alleged misrepresentations made by the agents?

A. Occasionally.

Q. And what is the general policy of the company with reference to treating with cases of that kind?

A. We investigate such complaints and try to get at the facts as to the alleged misrepresentation, and if the cases are flagrant and the subscriber wishes the account cancelled, that is done, and an agent who has a number of such complaints registered against him is dismissed.

Q. And how long has that been the policy of the company?

A. Always.

Q. And what do you find on investigation of many of these complaints of alleged misrepresentation; that the charges are true or false?

660 A. In a great many instances the subscriber has changed his mind or wants to evade payment on the contract, and alleges misrepresentation. In some instances it appears to be a bona fide belief on the part of the subscriber that the agent told him something different than appears on the contract. There is a great deal of variety in the conclusions we arrive at from investigation of such contentions.

Q. And when you are convinced that there are actual substantial misrepresentations made by the agent, you cancel the contract?

A. We cancel the contract.

Q. Has your company issued a new encyclopedia copyrighted in the year 1930?

A. It has.

Q. And is that the reference work that you are now selling?

A. It is.

Q. Are you selling any other reference work at the present time aside from this one copyrighted in 1930?

A. None except occasionally returned sets come in that we arrange to dispose of.

Q. But you are publishing no new one?

A. No other encyclopedia is being published and marketed from the publishing plant at this time except the New Standard Encyclopedia.

Q. I show you volume 1 of the New Standard En-
661 cyclopedia copyrighted the year 1930, and ask you if the flyleaves in there are the ones that you are now using.

A. They are.

Q. And are you using any other?

A. None.

Q. In your present encyclopedia, what have you done with reference to the list of authors and contributors?

A. They have been entirely eliminated.

Q. And what have you substituted in lieu thereof?

A. We have substituted a brief statement under the heading "Authorship."

Q. I show you document marked "Respondents' Exhibit No. 4", and ask you if that is a true copy of it.

A. It is.

Mr. McKeag. I offer it in evidence.

Examiner Averill. Is this what you refer to in your previous testimony as a flyleaf?

The Witness. It is.

Q. It is in one of the volumes of the new set of the 1930 copyrighted edition?

Mr. McKeag. In the first volume.

The Witness. Correct.

Mr. Winn. I have no objection to it.

662 Examiner Averill. The paper in question may be received in evidence and marked "Respondents' Exhibit No. 4."

(Said document was thereupon received in evidence and marked "Respondents' Exhibit No. 4.")

Mr. McKeag. I offer in evidence as respondents' exhibit no. 5 the 1930 prospectus.

Mr. Winn. No objection.

Examiner Averill. The prospectus in question may be received in evidence and marked "Respondents' Exhibit No. 5."

(Said document was thereupon received in evidence and marked "Respondents' Exhibit No. 5.")

By Mr. McKeag:

Q. Mr. Stanford, in these various complaints of alleged misrepresentations that are made by subscribers, do they

refer to or mention any organization as having given them advice in regard to it?

A. We have a good many of those come to us where they refer to local better business associations, and they refer often to the complaint filed by the Federal Trade Commission, and in some instances they refer to articles appearing in newspapers or school journals, calling attention to the complaint filed by the Federal Trade Commission against the Standard Education Society.

Q. So that most of these complaints that you receive of alleged misrepresentation are apparently originated
663 or fostered by these various organizations you have mentioned?

Mr. WINN. I do not object to your asking that question for the purpose of showing that that information came to Mr. Stanford. He knows whether that came to him, and he can testify to that, but if you go any further than that I shall object.

Examiner AVERILL. Objection sustained to the question in that form.

Mr. MCKEAG. I will withdraw the question. Just strike it all out.

You may cross-examine.

Cross-examination by Mr. WINN:

Q. Mr. Stanford, where are the offices of the Standard Education Society?

A. 134 North LaSalle Street, Chicago.

Q. And the offices of the Standard Encyclopedia Corporation?

A. At the same place.

Q. They are at the same place. This man, Charles E. Knapp, where are his offices, Mr. Stanford?

A. At the corner of Cass and Ohio Street, Chicago.

Q. Does he have an office in 134 North LaSalle Street, too?

A. No.

Q. Has he ever had an office there?

664 A. He was formerly in an office at that address.

Q. How long ago did he move?

A. Last Saturday.

Q. Where, in connection with the offices of the Standard Education Society or the Standard Encyclopedia Corporation, were Mr. Knapp's offices in the building?

A. They were adjoining.

Q. In the answer, Mr. Stanford, the statement is made in subparagraph a of paragraph 2 in effect that the respondent had, approximately two years prior to this answer, ceased distributing circular letters or other literature in which it

was represented that complimentary sets of the Standard Reference Work would be distributed free to representative people before instituting its sales campaign in connection therewith. Do you recall those circumstances?

A. Yes, sir.

Q. Who sent out those circular letters, Mr. Stanford, prior to two years before the answer was written, in which such sets were offered free to representative people?

A. Certain agents in the field would get up those letters and distribute them from their offices or places of operation.

Q. Were any of them signed by Mr. Knapp?

A. Knapp, as far as I know, never signed any letters that were sent out to or by our agents.

665 Q. I see. These acounts that Mr. Knapp turned over to you prior to January of 1929 in payment of the books that he bought, were they guaranteed by Mr. Knapp?

A. Yes.

Q. And if you did not collect the money——

A. Mr. Knapp was responsible for it.

Q. Mr. Knapp was responsible. There was a young lady by the name of Miss Eulena Frisbee who purchased a set of the Standard Reference Work in 1929, apparently, or in the latter part of 1928. Can you tell me from whom she purchased that set of books, Mr. Stanford?

A. Only by referring to the records.

Q. That is perfectly all right.

A. She purchased this from the Standard Education Society.

Q. From the Standard Education Society itself?

A. Yes.

Q. Not from a dealer who had purchased the books from the Standard Education Society?

A. The order or the office record here bears on it the name of one of our regular agents.

Q. Who was that agent, Mr. Stanford?

A. Mr. Rink.

Q. Can you tell me with regard to Miss Opal Bryson of Canondyke, New York, who the representative was that sold her the book?

666 A. The name of the agent was Keenan.

Q. Was Mr. Keenan a representative of the Standard Education Society?

A. He was.

Q. Miss Dorothy Chaffee of Fulton, New York, can you tell me who the agent was who sold her the books?

A. Mr. Gilbert.

Q. Is he a representative of the Standard Education Society?

A. He is.

Q. And was at the time he sold her the books?
A. He was at that time.
Q. And the other two were?
A. They were at that time.
Q. Mr. C. L. Karsner, in November 1926, was he a representative of the Standard Education Society?
A. He was not.
Q. The contracts that he obtained, Mr. Stanford, do you know what happened to them?
A. He was an agent of Mr. Knapp, and those commissions presumably were turned in to Mr. Knapp.
Q. Did Mr. Knapp turn over to the Standard Education Society, if you know, all of the contracts which he received in payment for the books, or did he collect some of them himself?

667 A. He turned over but a part of them to the Standard Education Society.
Q. The better part of them?
A. But a part.
Q. Miss Zella Parish, can you tell me who sold her the books?
A. Mr. Drudy.
Q. Was Mr. Drudy a representative of the Standard Education Society in the early part of 1927?
A. I do not recognize that name.
Q. Do you know a Mrs. H. C. Bell?
A. I do not know any such name.
Q. Did you ever hear of her having been employed by the Standard Education Society?
A. Never.
Q. Do you know whether or not she was employed by Mr. Knapp?
A. I think I recall that as the name of an agent of Mr. Knapp.
Q. Mr. Stanford, the Commission's exhibit no. 16 is a letter from L. A. Williams, Standard Education Society, by L. A. Williams, in which the following statement is made in the first paragraph, the letter being addressed to Mrs. M. S. Weber of Canton, Ohio. This is the first paragraph:
"This is in response to your communication of January 24th. Please accept our thanks for the subscription you have placed with our representative, Mrs. H. C. Bell."

668 Does that refresh your recollection any as to Mrs. Bell's connection with the Standard Education Society?
A. I am quite sure that Mrs. Bell was not an agent of the Standard Education Society, and the only explanation I can offer for that particular letter is that the account was

turned over to the Standard Education Society for collection, and Mrs. Williams, in her capacity of correspondent, acknowledged it in the manner indicated.

Q. Was that the usual method of acknowledging such letters or communicating with purchasers of the Standard Reference Work who had bought the books from Mr. Knapp, the contracts for which had been turned over to the Standard Education Society for collection?

A. This is the first instance that I ever knew of that being done.

Q. Do you know a Mr. R. J. Murphy who in 1925 sold the Standard Reference Work?

A. I do not recognize the name Murphy as an agent of ours.

Q. Do you recognize it as a man who had been employed by Mr. Knapp?

A. I have a somewhat indistinct recollection of hearing that he had an agent by that name.

Mr. McKeag. Cleveland, Ohio?

Mr. Winn. That is right.

669 The Witness. It appears to be a Knapp order.

Mr. Winn. There is in the file, Mr. Stanford, as exhibit marked "21", a letter from M. M. Lovas, addressed to Mrs. Oner Harris, 1547 Lauderdale Avenue, Cleveland, Ohio. The letter is dated January 18, 1926, and the first paragraph of this letter is as follows:

"Your name appears on our list as one of the number in your city who recently accepted from the company through its publicity department our special limited offer extended to business and professional people in your city."

In view of the fact that this contract was one of Mr. Knapp's, tell us how you would account for that paragraph which appears to indicate, and which does indicate, that this particular transaction was had between Mrs. Harris and the company.

A. They evidently referred to Mr. Knapp's company. This M. M. Lovas was Mr. Knapp's collection manager.

Q. Did Mr. Knapp have a company?

A. I cannot say whether he pretended to operate as a company or not, but that letter would indicate it.

Q. The letter happens to be on the letterhead of the Standard Education Society.

A. That lady was not working for us, and I do not know where she would secure a letterhead to acknowledge

670 an order.

Q. You did not know that Mr. Knapp was using the letterhead of the Standard Education Society in this connection, then, despite the fact that this appears to be

a circular letter, in that the address looks to be typewritten and the rest of it mimeographed in some way, including the signature?

A. I am very much surprised at this apparent use of our letterhead in a letter with which we have no connection. I find on the back of this letter a series of apparent testimonials and I can state positively that that was not prepared in our office.

Q. This letter was sent out on January 18, 1926. I assume that was at a time when Mr. Knapp was occupying adjoining offices to those of the Standard Education Society?

A. What is the date of that letter again?

Q. January 18, 1926.

A. At that time we were at 189 West Madison Street, which is a different location entirely.

Q. Was Mr. Knapp occupying offices adjoining the Standard Education Society offices at that time?

A. He was not.

Q. Was he in the same office with the Standard Education Society?

A. He was not.

Q. Do you know where he was then?

671 A. Yes. He was on another floor of the building at 189 West Madison Street.

Q. What floor were you on then? What floor was the Standard Education Society on?

A. We had some space on two or three floors, the tenth, twelfth, and thirteenth.

Q. And what floor was Mr. Knapp on?

A. Knapp was on the fourteenth floor.

Q. On what floor?

A. The fourteenth floor.

Q. I believe you testified at a previous time, Mr. Stanford, when you were testifying for the Commission, that a Mr. Joseph E. O'Connell, and, as I recall it, six or seven other collection agencies and attorneys were operating under instructions from the Standard Education Society in attempting to collect certain accounts on contracts providing for the purchase of the Standard Reference Work. Do you recall that testimony?

A. Something like that, although I would like to state that these various attorneys you refer to were not engaged by the Standard Education Society, but represented the various collection agencies to whom the accounts were turned over for collection.

Q. In some instances, then, your connection with the attorneys or the collection firms was not direct, but

672 was through other persons or other companies?

A. That is correct.

Q. You turned over to these collection agencies, did you not, accounts that you had received from Mr. Knapp, as well as accounts that you had received from your own agents?

A. I cannot say as to that. I would not think that to be the case, although it might have been.

Q. And Mrs. E. Olson, 2988 East 61st Street, in Cleveland, in 1926 purchased a set of the Standard Reference Work, Mr. Stanford. Can you tell me who sold her those books?

A. A Mr. Karsner.

Q. I believe we have mentioned Karsner before, haven't we?

A. He was an agent for Mr. Knapp.

Q. I find that Commission's exhibit 26, Mr. Stanford, is a letter addressed to Mrs. Olson from Joseph E. O'Connell, attorney at law, with regard to a balance due the Standard Education Society of $69.50, and it is a collection letter. Would that letter enable you to amplify your previous statement as to whether or not you turned over the accounts to these collection agencies, that is, as to whether or not you turned over the accounts that you had received from Mr. Knapp to these collection agencies?

A. This Mr. O'Connell, as I recall it, was an attorney for one of the collection agencies, and the presumption is that
673 that collection agency turned this over to Mr. O'Connell for collection, and it is just possible that Mr. Knapp may have been using the same collection agency.

Q. Commission's exhibit 25, Mr. Stanford, is a letter to Mrs. Olson from L. A. Williams on the letterhead of the Standard Education Society regarding the condition of Mrs. Olson's account. Would you say from that that you had had Mrs. Olson's account turned over to you by Mr. Knapp, and that Mr. Williams was acting for the Standard Education Society in attempting to collect it?

A. I should say that that was the case.

Q. And it is possible, according to your testimony, that the account was turned back, and that Mr. Knapp was using the same collection agency, or Mr. O'Connell, in some way in attempting to collect his account?

A. It would seem so from the evidence.

Q. Although it might have been turned over to Mr. O'Connell or to the firm which Mr. O'Connell represented by the Standard Education Society in an attempt to collect it?

A. I think that might have been the case also.

Q. Mrs. E. E. Hill, of Cleveland, Ohio, Mr. Stanford, purchased a set of the Standard Reference Work in 1925. Can you tell me whom she purchased it from?

A. The agent turning in the order was Mr. Murphy, working for Mr. Charles E. Knapp.

Q. Commission's exhibit no. 28 is a letter to Mrs. Hill.
674 It is apparently the same letter as Commission's exhibit 21 addressed to Mrs. Harris which I showed to you a few moments ago. This letter, that is, Commission's exhibit 28, is not signed, but it is on the letterhead of the Standard Education Society, and is typewritten at the bottom "Standard Education Society." It does not have the testimonials on the back, but seems to be the same circular letter. You did not know that this letter was sent out either, or that Mr. Knapp's organization was using the Standard Education Society's letterheads in acknowledging receipt of orders by Mr. Knapp's agents?

A. No; but I can conceive that in an instance of this sort Mr. Knapp may have turned that over to us to apply on his account, and we handled it from its inception.

Q. Commission's exhibit 32, Mr. Stanford, which is a letter sent to the same Mrs. Hill, signed by the Standard Education Society, per L. A. Williams, in speaking of the contract and Mrs. Hill's desire to be released therefrom, states in the fifth paragraph:

"We have fulfilled our side of this transaction by forwarding your selection of books to you and entering your name for ten years of loose-leaf extension service. A refusal or return of your books will not eliminate the necessity of your paying for them", and so forth.

Would you say that it was your duty to forward
675 books to Mrs. Hill as a result of a contract entered into between Mrs. Hill and Mr. Knapp?

A. That was the way it was handled. We would order these books shipped direct from our bindery to Mr. Knapp's customers on his requisition, and charge them with the books so shipped.

Q. Do you know a Mr. I. M. Mahaffey?

A. I have met him.

Q. In 1927, November 1927, was he an employee of the Standard Education Society?

A. He was not.

Q. Was he employed by, or was he one of Mr. Knapp's agents?

A. I understood him to be.

Q. Did you know a Mr. C. Lewis?

A. I do not recognize that name.

Q. Do you recognize the name as representing one of Mr. Knapp's agents, as being one of Mr. Knapp's agents?

A. I do not.

Q. Do you know a D. A. Waller?

A. I have heard of him as an agent of Mr. Knapp.

Q. Can you tell me who sold a set of the Standard Reference Work to a Susan E. Godfrey, of Toledo, Ohio?

A. The agent's name was Wattles.

Q. Was he an agent——

A. He was a representative of Mr. Knapp's.

676 Q. Was Mr. Knapp in the habit of turning over to the Standard Education Society the checks which he received from his agents on account of cash payment for sets of books, Mr. Stanford?

A. Not as a general proposition, but I think in some instances he may have turned in orders with checks attached to apply on his account.

Q. And in some instances that would be done so rapidly that a check could be drawn on October 6th and deposited by the Standard Education Society on October 8th, even though the check had to be sent from Toledo, Ohio, to Chicago, and go through Mr. Knapp's hands before it reached your office?

A. I cannot say as to that.

Q. Can you tell me, Mr. Stanford, who sold the set of books to Mr. James Kennedy, Jr., of Riverton, Nebraska?

A. There were two agents working together in this territory. I will say now that it was taken either by a Mr. Duraway or a Mr. Martin, who were agents of the Standard Education Society.

By Examiner AVERILL:

Q. Mr. Stanford, when you shipped out the sets of books as called for in the various contracts, would you at the time of the shipping of the books have in your possession, that is, in the possession of your company, I mean, the

677 contracts upon which the books were ordered?

A. On all orders taken by our agents that was the rule, that we must have the order in hand before the goods were shipped.

Q. Well, now, what did you do in connection with shipments that were made as you allege for the account of Knapp?

A. They would either requisition these books on us for delivery to his office for direct distribution or he would order them sent to his representatives in the field for distribution, or in other instances he would turn in to us the order to apply on his account, in which case we would make the shipment direct to the customer of the order.

Q. So you did make shipment direct to the customers of Knapp, as you allege, on receipt of the contract from the customer? You then would ship the books to the customer?

A. Upon Mr. Knapp's requisition. The orders taken in Mr. Knapp's department all went to Mr. Knapp, and then they were turned in to us to apply on his account, and in

many instances we made direct shipment upon his requisition to the customer.

Q. Yes; but in every instance did you not have to have in your possession, the possession of your company, the signed contract?

678 A. Not at all, and during these recent years, or somewhat over a year, we have had nothing whatever to do with Mr. Knapp's contracts. He collects on those from his own office.

Q. I understood you to testify that you did make collections on account of Knapp.

Mr. McKeag. Up to a year ago, Mr. Examiner, a year ago last January, but since then none at all.

The Witness. Since that time Mr. Knapp has handled all of his own field operations and collections.

Examiner Averill. All right.

The Witness. And I might add that prior to that date, January 1st, 1929, Mr. Knapp collected direct on a large part of his accounts. The only ones we had anything to do with were those that were turned in to us when he was unable to make settlements in cash on his accounts monthly.

By Mr. Winn:

Q. You testified on your direct examination, Mr. Stanford, that when you received complaints from purchasers of the books you investigated those complaints, and if you found the complaints warranted, you cancelled the orders. What sort of an investigation did you make in that connection, Mr. Stanford?

679 A. First we would ask for more specific information from the subscriber and endeavor to discover through that correspondence whether the subscriber was merely making that as an excuse or whether there was a valid reason for our giving consideration to the request for cancellation.

Q. Did you do that in every case in which you had the contract, including those cases wherein Mr. Knapp's alleged agents made the sales?

A. I think that was an invariable rule except in such instances where the charge of forgery was made or the people claimed that they did not sign an order, in which event on Knapp's accounts they were turned immediately back to him.

Q. In cases of misrepresentation or other such complaints as that, however, you made the investigation yourself, and, if you found the complaint warranted, you made an adjustment, even though the sale had been originally made by one of the men who, you say, represented Mr. Knapp and not your company?

A. I cannot say surely as to the policy in that respect.

Q. How soon did you investigate these complaints, Mr. Stanford?

A. An answer went out within a very few days after the receipt of the complaint, asking for particulars.

Q. Who was charged with the duty of making these investigations?

680 A. The collection department.

Q. That would be the department of which Mrs. Williams was a member?

A. That is correct.

Q. Why did you pay the money back to Mr. McBride from Indianapolis, Mr. Stanford?

A. Because it appeared from Mr. McBride's personal testimony that the agent had grossly deceived him as to what was purchased.

Q. Mr. McBride, according to his testimony, the morning after he had given the order to the agent telegraphed to you, that is, to the Standard Education Society, as follows, Commission's exhibit 71 being a copy of the telegram:

"Cancel order given your representative yesterday. Letter follows. Bankers Investment Company."

That telegram was sent on April 5th. On April 5th he wrote a letter, a copy of which letter is Commission's exhibit 72, in which he stated he would like to have a letter from the Standard Education Society with reference to the service, and asked that you hold up the order and the check until you heard from him further.

On April 9th he sent another letter, according to a carbon copy, which is Commission's exhibit 73, in which he asked for an answer to his telegram and letter of April 5th.

681 May 10th Mrs. Williams wrote to Mr. McBride, as evidenced by Commission's exhibit 74, in which she thanked Mr. McBride for his order, and is at a loss to understand why Mr. McBride has refused to accept the books which are at that time at the express company.

On May 15th, Mr. McBride wrote a letter to the Standard Education Society, as evidenced by Commission's exhibit 75, which is a carbon copy thereof, in which he refers to the wire and the letters.

On May 13th, a letter which apparently crossed Mr. McBride's letter of May 15th in the mails, there is another letter from Mrs. Williams which does not mention Mr. McBride's letters or telegram.

A letter of May 16th from Mrs. Williams indicates that that correspondence was not received in your office, that is, the first two letters and the telegram.

Does your file indicate whether or not that corerspondence was received, Mr. Stanford?

A. I am unable to locate here our office record on the correspondence.

Q. You cannot testify whether or not that correspondence was definitely received in your office?

A. I could not say at this time.

Q. Was any investigation initiated in your office after the letter was finally received with regard to this case?

682 A. I would have to refer to our correspondence record on that.

Q. Mr. Clifford Swor was the agent in this case. Was he a representative of yours or Mr. Knapp's?

A. He was representing the Standard Education Society, or, rather, misrepresenting them, I should say.

Q. Is Mr. Swor now employed by the Standard Education Society?

A. He is not.

Q. Isn't it a fact that he was one of the best salesmen that the Standard Education Society had so far as results were concerned; that is, so far as orders received were concerned?

A. He was a very mediocre and unsatisfactory salesman.

Q. Didn't he send in lots of orders?

A. Relatively few, except perhaps for a month or so back several years ago.

Q. Those were the orders that you testified concerning on your direct examination on behalf of the Commission, that they were not satisfactory?

A. Yes.

Q. So that you knew when this correspondence finally was received in the office of the Standard Education Society that an agent who had proved satisfactory in the past was the agent that had sold the books to Mr. McBride?

683 A. That whole matter of the McBride controversy did not come to my attention until long after the correspondence record here notes.

Q. Did you ever receive any of the controversies in which misrepresentations were alleged direct from the mail, Mr. Stanford, or didn't they come to you as a result of somebody in your collection department or somewhere else sending you the information?

A. Some years back, when I was handling certain agents, complaint against those agents would be placed on my desk, and it sometimes happens even now that certain types of complaints from subscribers are dropped to my desk for consideration.

Q. You testified, though, that the collection department was charged with the investigation work in connection with these alleged misrepresentations. Am I correct in gathering from that that in the ordinary course of events you

would not receive information regarding alleged misrepresentations of the agents until after they had been investigated by the collection department?

A. The collection department, either upon receipt of the first letter of complaint or upon early investigation, would take up the matter with the sales manager having that particular agent in charge, and there was a close cooper-
684 ation between the collection department and the sales director.

Q. They would not come to you, though, in the ordinary course of events?

A. Not in recent years.

Q. So that when you say that the McBride matter was not brought to your attention, it was the ordinary thing that it would not be brought to your attention?

A. That is correct.

Q. Now, with regard to this new encyclopedia that we were speaking about that was copyrighted in 1930, is that entirely from new plates, Mr. Stanford?

A. Not entirely.

Q. You testified that you sold the old sets that you still had on hand that were returned to you. At what price do you sell those old sets, Mr. Stanford?

A. Prior to the time that we discontinued agents selling that edition, we would get back returned sets that were in perfect shape for inspection, and they were redelivered on new orders, but since we have no agents selling the older editions in the field now, we have arranged to sell these older sets to a dealer outright for cash, and we have no further connection with them.

Q. You do not sell them through the agents at all then?

A. No. I might say that we have one dealer who has not received all of the sets of the old edition, that he had
685 paid us for, and we are delivering returned sets from time to time to fill out his quota.

Q. Now, with regard to this fly leaf which has been introduced as Respondents' exhibit 4 on "authorship", the following statement is made:

"The new Standard Encyclopedia has been compiled by the editorial staff of the Standard Education Society, numbering among its members men of note in encyclopedic compilation for more than a quarter of a century."

Who are members of the editorial staff of the Standard Education Society who compiled the new Standard Encyclopedia, Mr. Stanford?

A. It states in that paragraph on authorship that the staff consists of men of note in encyclopedic compilation over a quarter of a century.

Q. Yes, but what I wanted was the names of the men.

A. Their names will be found in our earlier editions.

Q. They are the same people who are listed in the earlier editions, then?

A. Yes.

Q. Have any of the men whose names are listed in the earlier editions other than yourself written any of the new material for the New Standard Encyclopedia?

A. No names appear on there besides myself; none of them have.

686 Q. Are there any other names that are not given on the fly leaf as authors and editors, that is, on the fly leaf of the prospectus formerly used, Commission's exhibit 83, who have contributed articles for the New Standard Encyclopedia, that is, especially written for that New Standard Encyclopedia, the 1930 edition?

A. That work has been handled directly by the director of revisions, whose name appeared on that sheet.

Q. That is Mr. C. R. Fiske?

A. Yes.

Q. He is not listed as an author or an editor on the old prospectus, is that correct?

A. He was not connected with the editorial staff at the time the earlier editions were prepared.

Q. What or who, rather, among the members of the editorial staff of the Standard Education Society for the last quarter of a century are men of note in encyclopedic compilation, and have been such for more than a quarter of a century?

A. Most of the names that appear on the editorial pages of the previous editions could be classified as such. I would refer specifically to Mr. William F. Rocheleau.

Q. You testified, though, a few moments ago that none of these men who are listed here had prepared any new articles specifically for the 1930 edition?

A. That is correct.

687 Q. Have any of them revised older articles by them for the new 1930 edition?

A. I could not say as to that. The revision work was entirely conducted by Mr. Fiske, who is the director of revisions.

Q. You, however, did write some new articles for the new book?

A. Some.

Q. Did Mr. Fiske write some new articles for the new book?

A. A considerable number of new articles, I should say.

Q. Who else wrote new articles for the new book?

A. Various others associated with Mr. Fiske.

Q. So that others than those listed as authors and editors in the old prospectus, that is, the book marked "Commission's exhibit 83", aided in the preparation of the New Standard Encyclopedia gotten out in 1930?

A. Correct.

Q. Who were some of those, Mr. Stanford?

A. I could not say as to that.

Q. Would they include those listed as men of note in encyclopedic compilation for more than a quarter of a century?

A. They would not.

Q. So when you use that phrase in that "authorship" you are referring to yourself only so far as new ar-

688 ticles are concerned?

A. That reference to the people of note for more than a quarter of a century has no reference to the revision of the matter or the preparation of new matter that appears in the 1930 edition.

Q. What does it have reference to?

A. It refers to just what it says in that paragraph, if you will read that, please.

Q. "The New Standard Encyclopedia has been compiled by the editorial staff of the Standard Education Society, numbering among its members men of note in encyclopedic compilation for more than a quarter of a century. Further assistance has been given by hundreds of contributors and reviewers, thus covering practically every field of human endeavor."

Do I understand from that, then, that the word "compiled" has been used because the material that is in the New Standard Encyclopedia has been taken from previous encyclopedias published by the Standard Education Society, the said material having been prepared in part by the men who are listed as authors and editors of the old Standard Reference Work as set out in the fly leaf of Commission's exhibit 83?

A. That is largely true. The word "compilation" does not necessarily imply original authorship.

689 Q. Exactly. Then, except for the work that you have done in preparing new articles, laying aside the meaning of the word "compiled" entirely, and getting at the fact of the matter, except for the work that you have done in preparing new articles, some of these men who are listed as authors and editors of the old work wrote new articles for the new book?

A. In general, that is true.

Q. Well, did any of them write articles for the new book specifically?

A. I cannot say as to that.

Q. Is Mr. Rocheleau still connected with your organization?

A. Mr. Rocheleau is deceased.

Q. Mr. Aton?

A. Mr. Aton has not contributed any new material to our encyclopedia for a number of years.

Q. Mr. Barr?

A. Mr. Barr was killed in an automobile accident last summer.

Q. Before he was killed did he prepare any new articles for the encyclopedia?

A. Not for the 1930 edition.

Q. Mr. Boag?

A. It has been several years since he did any editorial work on this.

690 Q. Martha Blanchard Murphy?

A. She was one of the original authors of the earlier editions, and has not contributed anything specifically new for several years.

Q. Edward G. Quigley?

A. The same is true of Professor Quigley.

Q. Thomas A. Russell?

A. I would say it would be three years since Dr. Russell had prepared anything for us.

Q. Emory Adams Allen?

A. Approximately the same length of time.

Q. Oscar L. Brilliant?

A. I think Dr. Brilliant's last work with us was in 1926.

Q. Miss Nagler?

A. She was an original author that has contributed nothing to recent editions.

Q. Mr. Rankin?

A. The same is true of Mr. Rankin.

Q. Miss Smedley?

A. Miss Smedley's last work with us was in 1926 or 1927; I am not certain as to that.

Q. That was before you contemplated the 1930 edition of the New Standard Encyclopedia, I take it?

A. That is correct.

Q. Willis Mason West?

691 A. It has been a number of year since he has contributed anything new.

Q. William Zimmerman, Jr.?

A. The same is true of Mr. Zimmerman.

Q. Mr. Sinclair Laird?

A. He contributed a considerable amount of new material on Canada in 1926 or 1927.

Q. Then who, Mr. Stanford, if anybody, wrote any new material for the New Standard Encyclopedia except your-

self, who could be called men of note in encyclopedia compilation for more than a quarter of a century?

A. It is not my understanding that that paragraph refers to new contributors. It was not the intention of the writer of that paragraph that it did, and I wrote the paragraph.

Q. Will you please answer the question? Read the question.

(Question read.)

A. Modesty leads me to hesitate at claiming that distinction.

Q. Well, leave yourself out of it, then. I am willing to put you in there, but forget that you would be included in that list. Then who did write any new material, if anybody?

Mr. McKeag. I submit, Mr. Examiner, that this 1930 edition, as the witness has testified, contains much that was in the previous edition. It was revised in certain par-
692 ticulars and brought down to date, and contains, as the witness stated, material furnished by these various men, and many facts that were true then are just as true today as they were then.

Examiner Averill. Now, the witness may answer this question. It is separated now. It is not two questions, it is one, as to who wrote new material for the 1930 edition, then after he gives those facts, he may be asked, if desired, who among those people would come under the clause in connection with twenty-five years' experience. But let us first find out whether any new material was contributed. You are going right around in a circle.

Mr. McKeag. My point is, Mr. Examiner, that the material that is in the 1930 edition contains material which is the result of the development over a period of twenty-five years, contributed by various men.

Examiner Averill. All those things are arguments to be made upon the language there. What we want from this witness are facts, and he may answer the question as to who contributed new material for the 1930 edition. That is the last question asked.

The Witness. The statement in that paragraph is a correct statement of the situation. It was contributed by the editorial staff, and I am the chief editor of that staff, and the direction of the revision work, which is the foun-
693 dation for the 1930 edition, was under the direction of Mr. Fiske.

By Mr. Winn:

Q. What I want to know, Mr. Stanford, is who was it that wrote new articles for the 1930 encyclopedia, not revisions and not articles listed from previous encyclopedias, but new articles.

A. You mean names of specific people that contributed those?

Q. Yes.

A. Well, as the manuscript came to my hands for O. K., it was prepared by Mr. Fiske and certain assistants of his, and I can readily say that none of those people would be classified as compilers of encyclopedias for twenty-five years.

Q. And they were the only people who prepared new articles for the New Standard Encyclopedia?

A. Correct.

Q. As I understood your previous testimony, Mr. Stanford, the fly leaf on authorship is not in the new prospectus of the New Standard Encyclopedia copyrighted in 1930?

A. It was not in the one that I picked up in the stockroom this morning, somewhat to my surprise. There was no evidence as to authorship in that group of sample pages.

Q. Did any of those men who are listed in red ink about the third or fourth page of the prospectus, that is, Bailey, Burbank, Burkett, and others in agriculture, and
694 others in various other lists, prepare articles specifically for the New Standard Encyclopedia?

A. I do not recognize any of these names as among our regular authors or editors. Many of these have been dead for years.

Q. I know that.

A. They are writers on the subjects in question.

Q. You would say, then, that none of them prepared articles specifically for the New Standard Encyclopedia?

A. I am sure they did not.

Mr. WINN. That is all the questions I have.

Redirect examination by Mr. MCKEAG:

Q. But the articles that they previously prepared for the earlier editions appear in the 1930 edition?

A. That is correct.

Recross-examination by Mr. WINN:

Q. Did any of these men prepare articles specifically for any of the previous editions, such men as Bell, Edison, Morse, and Marconi?

A. There are extracts and selections from those men's works in the Standard Encyclopedia.

695 Redirect examination by Mr. MCKEAG:

Q. Mr. Stanford, take the account of Mrs. E. Olson, Cleveland, Ohio, procured by Mr. Knapp. Was that contract cancelled at any time?

A. Yes.

Q. What was the date of that cancellation?

A. It looks as if it were cancelled September 22, 1926.

Q. Take the account of Miss Ruth Greiner of Toledo, Ohio. What about the cancellation of that contract?

A. From the record it would appear that it was cancelled November 30, 1926.

Q. Take the account of Mrs. E. E. Hill. What about that one?

A. June 4, 1926.

Q. Cancelled?

A. Cancelled.

Q. And the matter of the Bankers Investment Company of Indianapolis, McBride. When was the first time that this matter came to your attention personally?

A. When we received notice from the attorney for the Federal Trade Commission, asking us to produce the record of the McBride case.

Q. For the previous hearing?

A. For the previous hearing.

696 Q. And the first you ascertained the facts was when Mr. McBride appeared here personally before the Commission?

A. It was a day or two prior to that, I looked up the office record and brought such records as we had here at the time, but I had no direct testimony on that until I heard Mr. McBride set forth his case.

Mr. McKeag. That is all.

Recross-examination by Mr. Winn:

Q. Why did you cancel these three contracts, Mr. Stanford, that you just spoke of, Mrs. E. E. Hill, Miss Greiner, and Mrs. Olson?

A. In the first place, the books had been returned, and the various correspondence did not seem to indicate collectibility.

Q. Is the return of the books sufficient to cancel the contract?

A. Not in itself alone.

Q. Is the return of the books together with apparent impossibility of collection sufficient?

A. That would be considered ample reason for cancelling the account.

Mr. Winn. That is all.

Mr. McKeag. That is all.

697 Warren H. Ward was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. McKeag:

Q. What is your name?

A. Warren H. Ward.

Q. Where do you live?

A. 2336 Lincolnwood Drive, Evanston.

Q. What is your business?

A. I am associated with Mr. Stanford in the Standard Education Society.

Q. You are an officer of that concern?

A. Yes; secretary.

Q. Are you engaged in the sale of books, encyclopedias, and Standard Reference Work, and so forth, individually?

A. Not at all.

Q. Or are you selling them as secretary or director of the company?

A. All of my work is connected with the Standard Education Society.

Q. All the work you do is on behalf of the Standard Education Society?

A. Yes.

Q. And what charge have you over the sales agents?

698 A. Well, most of the agents who work direct for the Standard Education Society come under my direction.

Q. And about how many different agents do you employ during the course of a year?

A. Approximately four or five hundred different ones.

Q. And how many agents do you usually have? What is the average number that you have in your employ at any one time?

A. Oh, a hundred, or possibly a little more.

Q. And these agents, how do you come to employ them? What contact do you make with them at the time of their employment, and what with reference to their experience in this work?

A. Well, in recent years it seems that we get most of our men as a result of applications from them by correspondence or personally in the office.

Q. And can you approximate what percentage of them have previous sales experience in books of a similar nature?

A. Well, practically all of them. Some years ago we used to send organizers out to interest new people in the work, and run ads in different towns, in an endeavor to hire men, but recently we get so many applications from salesmen that we have about all we can handle without making any concerted effort to go out after new ones.

Q. And these salesmen that make application to

699 you, do they give references where they have been working before?

A. Yes; we always insist on some knowledge of a man's previous record before we give him an outfit.

Q. And do you make inquiry as to his work?

A. Yes.

Q. Do you furnish, or does the company furnish the salesmen with any sales talk or any specific instructions as to what to represent to prospective customers?

A. Well, we have furnished sales talks. Usually, though, the experienced men do not care about a sales talk. They have sold books before. They think they know more about it than anything we can tell them.

Q. And how long is it since you have furnished specific sales talks to salesmen?

A. We still have sales talks that we furnish occasionally. I might say there that as far as the sales talk or the demonstration is concerned, that whatever training we give them is usually given by some more experienced salesmen in our work, and the only practical way to train a salesman is to send him out with somebody else. It is more than just a sales talk. A sales talk is a small part of it.

Q. And what supplies are furnished the salesmen?

A. Prospectus, what we call a stretcher, showing the backs of the volumes.

700 Q. Is that it?

A. That is the stretcher showing the backs of the volumes. Those are stretchers of extra sets that we use on a part of our business in combination with the Standard.

Q. And then you supply them order blanks?

A. Order blanks and some other little literature, not much.

Q. I show you a circular which is marked for identification "Respondents' Exhibit 6."

Examiner AVERILL. I have marked the paper "Respondents' Exhibit 6" for identification.

By Mr. McKEAG:

Q. Is that furnished your salesmen?

A. Yes.

Mr. McKEAG. I offer it in evidence as respondents' exhibit 6.

Mr. WINN. No objection to that.

Examiner AVERILL. Let the paper in question be received in evidence and marked "Respondents' Exhibit 6."

(Said document was thereupon received in evidence and marked "Respondents' Exhibit 6.")

Mr. McKEAG. I ask these be marked "Respondents' Exhibits 7, 8, and 9", respectively, for identification.

Examiner AVERILL. I have marked the papers "Respondents' Exhibits 7, 8, and 9", respectively, for identification.

701 By Mr. McKEAG:

Q. I ask if those order blanks are the ones that are in use?

A. Yes.

Q. With reference to the sale of the Standard Reference Work.

Examiner AVERILL. Is that the Standard Reference Work, now?

Mr. MCKEAG. The Standard Encyclopedia; pardon me. Let these be marked "Exhibits 10 and 11."

Examiner AVERILL. The papers have been marked "Respondents' Exhibits 10 and 11" for identification.

By Mr. MCKEAG:

Q. And are these the forms that are used with reference to the Standard Extension University department?

A. Yes.

Mr. MCKEAG. I offer in evidence exhibits 7 to 11, inclusive.

Mr. WINN. No objection.

Examiner AVERILL. The papers in question may be received and marked "Respondents' Exhibits 7, 8, 9, 10, and 11."

(Said documents were thereupon received in evidence and marked "Respondents' Exhibits' 7, 8, 9, 10, and 11", respectively.)

By Mr. MCKEAG:

702 Q. Do you use any other forms or order blanks for the sale of these various books and services?

A. No; I do not recall that we do at the present time.

Q. Mr. Ward, what is the policy of the company with reference to salesmen against whom complaints are made as to misrepresentation in the sale of your books?

A. The collection department always bring to my attention any complaints regarding misrepresentations, or where the activities of the salesmen might be in question.

Q. Then what do you do?

A. I call it to the salesman's attention, then get a copy of the letter with the complaint, ask him for his version of it, and if it is a real serious complaint I notify him that if this is true and it happens again we will dismiss him.

Q. And do you have occasion to dismiss salesmen from time to time?

A. Oh, we do quite frequently.

Q. Now, with reference to this man Swor, you know Mr. Swor, do you?

A. Yes.

Q. Who is he?

A. Well, he is——

Q. I mean, does he hold any other position, or does he do anything else?

703 A. Well, I do not know much about Swor. He took some business for us some years ago, and about a year ago he telegraphed us for an outfit, saying that he was going

to come with us this time and settle down and do some real serious work, with the hope of working into a managerial position, so we decided to give him another trial. He took probably half a dozen orders. As soon as we heard of this McBride situation, and I believe we had one other complaint, we decided we did not want anything to do with Swor. I notified him by registered mail at his last known address to return the outfit and to take no further orders for us. We have not heard anything further from him since.

Q. Did he return the outfit?

A. He never did.

Q. Now, take these two gentlemen that I refer to, Martin and Duraway in Nebraska.

A. Martin has been discharged just recently. We had no real serious complaint against him, but we had several of them, and it seemed as if he was causing us more trouble than any one salesman should, so we decided we did not want to have him represent us any further.

Q. Were any of the complaints serious?

A. Not particularly.

Mr. McKeag. You may cross-examine.

704 Cross-examination by Mr. Winn:

Q. You are the same Mr. Ward who testified on behalf of the Commission here in January, wasn't it?

A. Yes.

Q. Mr. Ward, what is the price of the New Standard Encyclopedia?

A. $69.50.

Q. I notice on the contract that has been introduced in evidence as respondent's exhibit 7——

A. Perhaps I had better change that testimony. We have various prices, depending upon the bindings and the other sets sold with it in combination. Perhaps I should not say $69.50. We also sell at $49.50 in another binding. I was thinking of the type of order we most frequently take.

Q. I notice on the paper that has been introduced that a price of $94 is printed thereon. Can you tell me what that is for?

A. That is one of our combination propositions.

Q. What do you mean by that?

A. These blank spaces here at the bottom are places for the salesmen to write in the names of the other sets that go with it.

Q. What are those other sets?

A. There is a list of about ten or twelve from which
705 the subscriber is allowed to select.

Q. You mean they are fiction?

A. Some of them.

Q. And they are sets of books that go along with the New Standard Encyclopedia in your so-called "combination sales"?

A. Yes. At $94 the subscriber gets one or more extra sets.

Q. And the same thing was true, the same general policy was pursued by the Standard Education Society at the time that it was functioning, is that true?

A. Oh, I do not know of any outstanding change.

Q. Of course, these contracts are of the New Standard Encyclopedia?

A. Yes.

Q. Which is a new publication, as I understand it, and the contract is directed to the Standard Encyclopedia Corporation, which is, of course, a different organization from the Standard Education Society. As I understand it, you had the same general policy with regard to combination sales under the Standard Education Society that you now have in the Standard Encyclopedia Corporation?

A. Perhaps that is true.

Q. What are the usual complaints that you receive, Mr. Ward, regarding misrepresentations?

A. Usually they are not specific. We try to get the
706 subscriber to state specifically just what the complaint is, and it is not very often that we can get anything at all definite from them. When a subscriber wants to cancel the order they usually say, "Please cancel my order", and do not give any reason.

If there is a reason given, it is quite frequently, "I have changed my mind", or "I have decided that I cannot afford it", or, "I have found that we already have an encyclopedia in the family", and just occasionally they will say that the proposition was misrepresented and therefore they demand that their order be cancelled, and in that case, where the misrepresentation is charged, the collection department is instructed to bring those complaints to me. If they do not say why it is misrepresented, in what way it is misrepresented, we try to get the subscriber to say.

If we have any large number of complaints of misrepresentation, we immediately notify the salesman to that effect, and that he must change his plan of selling, or he must be very specific in his representations to the subscriber, so that they not only conform to the contract, but so that the terms of the contract are clearly understood by the subscriber.

Q. Do you consider the fact that a subscriber has changed his or her mind or it is too much money to pay or that they have an encyclopedia is sufficient to warrant a
707 cancellation of the order?

A. No; but we do cancel those orders even for rather mild reasons, providing the books have not already been shipped. If the books have already been shipped we do not cancel the order unless it appears that the subscriber has a real grievance.

Q. In such cases as I outlined a moment ago where the subscriber has changed his or her mind, or similar reasons, is that sufficient?

A. If the books have not been shipped we would cancel it without any argument, probably; that is, as a rule we would. If the books have been shipped, though, we would answer the letter and endeavor to resell the subscriber.

Q. Would one or more or an accumulation of such complaints be sufficient for you to discharge the salesman?

A. It might be, if a salesman has too large a percentage of subscribers wanting to cancel, whether there was any misrepresentation involved or not. We are naturally in business to get good orders, collectible orders, and, if there is too big a percentage of the other kind, we naturally would not tolerate it.

Q. You say some of the people say the books have been misrepresented to them, and you try to find out in what way they have been misrepresented?

A. It is only a small percentage of our difficulties
708 where misrepresentation is charged, a very small percentage, and where it is charged it is usually just as indefinite as that.

Q. That is about all you can get on it?

A. That is about all we can find out. A number of times I have written these subscribers personally, endeavoring to draw them out in what way it is misrepresented, and it is very seldom we can get them to state any specific reason or kind of misrepresentation, and even then it really does not mean anything as a rule. It is very frequently caused by somebody else telling them that they should not have bought, or some rumor has come to them that they heard of somebody else buying a set.

Q. That is what you understand as a result of your investigations?

A. Yes. It may have been a set of books of most any kind that the subscriber was not satisfied with, or he may have heard of some of the Commission's activities in our case, or some other company's, and he has got a bad impression of the book business in some way, and that rumor gets to the subscriber, and he will say, "Well, the set was misrepresented, and I do not want to go through with the payment."

Q. When was this man Martin discharged?

A. About the first of January.

709 Q. You say that you had received numerous complaints regarding Mr. Martin's activities?

A. Well, we received a larger percentage of complaints than we were willing to tolerate; not exactly complaints of misrepresentation. Most of them were merely people who stated they decided they could not afford it.

Q. You stated, however, that the complaints were not serious, I believe.

A. I do not recall anyone that claimed that Martin really tried to defraud the subscriber or to misrepresent it seriously.

Q. Is Mr. Duraway still employed by the company?

A. Yes.

Q. What would you consider a serious complaint, or, rather, what is a serious complaint to your company, Mr. Ward?

A. Well, the McBride order would be a sample of it, I think.

Q. There was some testimony introduced out in Nebraska by three men who had bought some books either from Mr. Martin or from Mr. Duraway or both of them, who testified, I believe, that the so-called "give-away" talk had been used. Do you consider that a serious complaint, or is that to your company a serious complaint?

A. I do not know just what you have in mind by the give-away talk. I would say it would depend a lot on what
710 was said by the salesman.

Q. Well, the give-away talk would involve, we will say, the giving away of the Standard Reference Work and of the research service when the extension service is sold.

A. We do not very often give away books.

Mr. McKeag. I object to that. It is the function of the examiner and the Commission to determine that.

Examiner Averill. Read the question.

(Question read.)

Mr. McKeag. He asked him whether he considered that selling in that way was a serious complaint of misrepresentation. That is the very question that is raised here by the pleadings for the examiner to determine.

Examiner Averill. I think the objection is sound there.

Mr. Winn. Might I state just one word? We have had some talk here today with regard to the policy of the company with regard to the seriousness of complaints as they are regarded by the company. I am trying to ascertain what the policy of the company is with regard to the give-away talk. If to the company the use of the give-away talk is a serious complaint, I want to know it. If the use of the give-away talk is not a serious complaint, I want to know that. I am trying to find out what the serious complaints

are that were spoken of by Mr. Ward when he
711 was using that phrase with regard to Mr. Martin's discharge. I am not talking about anyone's opinion. I am not trying to usurp the powers of the Federal Trade Commission in determining whether or not the give-away talk is a violation of the Trade Commission Act. I am trying to find out whether or not to the Standard Education Society or to the Standard Encyclopedia Corporation the use of the give-away talk or a complaint from a purchaser that the give-away talk has been used would be considered a serious complaint, or is, so far as the policy of the company is concerned, a serious complaint.

Examiner AVERILL. I must sustain the objection to the question in the form in which it is asked.

By Mr. WINN:

Q. A man by the name of James Kennedy, Jr., Mr. Ward, testified under oath, of course, in Nebraska, Red Cloud, Nebraska, on November 6, 1929, that a Mr. B. L. Martin called on him, and the following is a portion of his testimony. This on page 529:

"He explained that in order to introduce the sales boosting campaign that they were coming into Riverton and were going to give away three sets of the Standard Reference Work; that the reason of this was that they wanted a corps of school teachers to come into the territory, and they
712 were going to sell these books in the surrounding territory, and they wished to have the people be able to see them; so they wanted these three sets in the business district where they could be on display. Then he began explaining just how the books were put out.

"He turned to my employer's law library and pointing to the sheepskin binding on the Northwestern Reporter, said it was bound in sheepskin, only more highly embossed, very highly embossed, and that it was the newest work on the market.

"He came to the contract, and he wrote this contract out. At first he wrote for the ten books of the Standard Reference Work, he wrote that $110, which is the price that he told it was. Then he wrote 'Free' for them, and then as he got through that, he took and wrote $69.50 for the ten years' revision service that was to come with the books, and when I asked him how it come that they were giving them free and then charging $69.50 he said that the people that bought the sets for $110 had to pay this $69.50 besides during the ten years if they took the revision service and that they would have to pay this at the rate of $6.95 a year, and due to the fact that we were getting the set of books free we had to pay this $69.50 total within a year."

Farther down he said:

"So he wrote the contract out in that way, that I
713 was to get the set of books free that was charged $110 for, and I was to get the revision service for $62.50."

Q. Did you ever receive a complaint from Mr. Kennedy, so far as you can recall, in which that was set up?

A. I do not recall that particular name at all.

Q. Did you know that Mr. Martin had made such a sales talk as that?

A. No.

Q. Did you know that any of your salesmen were making sales talks such as that?

A. I never heard any complaint just like that, no.

Q. Do you ever discharge any salesmen for making such sales talks as that?

Mr. McKeag. He said he never heard of any salesman making it. How could he discharge him for it if he never heard of it?

By Mr. Winn:

Q. Well, have you read the record that has been compiled by the Federal Trade Commission in connection with this case?

A. Not all of it.

Q. Have you read part of it?

A. Yes.

Q. Did you see any instances in there where persons had testified that such a sales talk had been made?

714 A. I think I noticed one or two; yes.

Q. Did you discharge those agents as a result of that sales talk?

A. Well, I would not immediately and unqualifiedly discharge a salesman on one subscriber's complaint without at least getting his version of it and warning him that such practices could not be tolerated and giving him at least one more chance. I am sure that I would not put up with more than two or three complaints of that kind, and retain him.

Q. Then, so far as the policy is concerned, you would say that a complaint regarding a salesman using such a talk as this is a serious complaint?

Mr. McKeag. "This" embodies more than the give-away.

Mr. Winn. I am only talking about the give-away plan.

By Mr. Winn:

Q. I want you to forget for a moment the sheepskin embossed books.

A. I would say that any order where the subscriber does not thoroughly understand the terms of the contract, what

he is to receive, what he has agreed to pay, and how he has agreed to pay it, would be a type of order that we would not care to receive.

715 Q. Isn't it a fact, though, that your collection department sends out many, many letters in which it is pointed out to purchasers that the contract is a legal and binding contract, and that the terms of the contract are set out, and that it is noncancellable?

Mr. McKeag. There is nothing wrong with that, Mr. Winn.

Examiner Averill. I cannot see where we are getting on this.

The Witness. After we once accept an order——

Mr. McKeag. Wait a moment.

Mr. Winn. Was there an objection to that?

Mr. McKeag. Yes; I made an objection.

Examiner Averill. I sustain the objection. As to what these people may think about what they do, that is not evidence as to what they do. What evidence is in the record is in the record, and any other evidence may be introduced, but as to their opinions about whether things are serious or not serious, that does not come under the terms of this complaint as I conceive it.

By Mr. Winn:

Q. As a result of your having read the record, Mr. Ward——

Mr. McKeag. He did not say he read it; he said he read parts of it.

By Mr. Winn:

716 Q. As a result of your having read some parts of the record, have you gotten in touch with any of the salesmen who are alleged to have given the give-away talk?

Mr. McKeag. I object to that.

By Mr. Winn:

Q. And asked for their verison of the affair?

Mr. McKeag. I object to that.

Examiner Averill. The objection is sustained, gentlemen.

Mr. Winn. I am asking the gentleman to testify as to a fact. He testified he read part of the record.

Examiner Averill. I do not think that has anything to do with the question of what these respondents are charged with doing. They are not charged with having not taken copies of testimony which may have been adduced during the process of this hearing, and that is all that those questions could go to, as to what they have done based on the testimony that is in this record.

Mr. WINN. Mr. Ward testified earlier this morning that he had not heard of any cases of the give-away sales talk being used.

Examiner AVERILL. He was not speaking then, naturally, as to testimony taken during the course of this thing. He was speaking as to what he knows of in his capacity as secretary of the respondent. No, gentlemen, I must
717 sustain the objection.

Mr. WINN. Would you say, Mr. Examiner——

Examiner AVERILL. I am not going to argue. That is sufficient. Take an exception and go ahead.

Mr. WINN. That is all the questions I have.

Mr. MCKEAG. I think that is all.

(Witness excused.)

HAROLD M. STANFORD was thereupon recalled and, having been previously duly sworn, further testified as follows:

Redirect examination by Mr. MCKEAG:

Q. With reference to exhibit no. 46, with reference to the Standard Extension University department, when was that department started by the Standard Education Society?

A. In 1924.

Q. And what was the original price for that service?

A. We charged $98 on a special introductory enrollment.

Q. And was that order blank termed a special introductory enrollment?

A. It was.

Q. And about when was the price of that changed?
718 A. The following year it was changed to $120, as I recall it, and that was also marked "Special Introductory Enrollment."

Q. And then when was the price again changed?

A. 1927, I think, it was changed to $135, and the first blanks that we got out at that price we had it printed on as a special introductory offer.

Q. And then was that removed at any time?

A. Yes.

Q. About when was it?

A. We discontinued the use of the special introductory offer from the order blank as soon as we had determined that we would continue the price regularly at $135, and that was in 1927 or early in '28, I should say.

Q. And since that time have any of these order blanks with reference to the Standard Extension University contained that phrase at the top of them?

A. No. The blanks we had on hand with that term on were destroyed, and no new ones have been printed since that time.

Q. With that on?

A. With that on. We have had our attention called to a few orders that were turned in to us where the agent may have had those on hand subsequent to that date, but very few of them, and none recently.

719 Q. And were the agents instructed to destroy the old order blanks?

A. A specific letter went out to each agent at the suggestion of an investigator for the Federal Trade Commission, that this was open to objection, and each agent was instructed to destroy any such blanks in his possession.

Q. And none have been printed since then?

A. Not for over two years.

Recross examination by Mr. WINN:

Q. Did you ever sell any of those courses for more than $135?

A. I cannot say specifically as to that.

Q. Was the price ever more than $135?

A. I think not.

Mr. WINN. That is all.

Mr. MCKEAG. That is all.

(Witness excused.)

Examiner AVERILL. Does the respondent rest?

Mr. MCKEAG. The respondent rests.

Examiner AVERILL. Gentlemen, the taking of testimony is now concluded, and upon the receipt of the specific instances covered by the respondents' motion to strike, the Ex-

720 aminer will issue an order ruling upon the specific instances cited, and will at that time issue an order closing the case.

Let the record show that the Examiner has the exhibits.

Whereupon the hearing of the above-entitled matter was closed.

721 DOCKET NO. 1574

CHICAGO, *June 20, 1930.*

Met pursuant to adjournment, 10:30 o'clock a. m.

Before: EDWARD M. AVERILL, Examiner.

Appearances: Mr. Winn, for the Commission. Messrs. Langworthy, Stevens, McKeag, and McCormick (by Mr. James M. McKeag), for the respondents.

Examiner AVERILL. Gentlemen, as this hearing this morning is pursuant to notice, there being before the Trial Examiner a motion on behalf of the respondent to strike certain testimony from the record and it appearing from said motion that it was advisable to hear counsel in connection with the same and it also appearing to the Trial Examiner that there appeared to be certain matters brought out in the testi-

mony which were not made clear and that further testimony on these matters would be necessary in order that a proper finding could be made in connection with the matter, and we therefore set the case for taking further testimony this morning.

Now, one of the things that struck the Trial Examiner as being very important—I just wanted to see the exhibits——

722 Mr. WINN. Wait a minute. Here are the exhibits.

Examiner AVERILL. That it appeared, upon an examination of the paper in evidence, respondent's exhibit no. 6, that certain testimonials alleged to be from certain people, whose names are shown therein, which testimonials in connection with the work known as New Standard Encyclopedia put out by the Standard Encyclopedia Corporation, one of the respondents in this case, that these testimonials appear to be word for word the same as testimonials purporting to have been given by the same people for the Standard Reference Work, that is, prior to the time when the New Standard Encyclopedia was put upon the market and in justice to the respondents and in order that I may have an opportunity to further check this matter up—that was one of the points that I desired information on.

The other was, I would like to be able to get in this record—and they, of course, will be returned to the respondents—a set of the Standard Reference Work, its latest edition that was put out and a set of the new Standard Encyclopedia. We will take care of them and see that they are not abused in any way, but I should like to have them so as to make certain comparisons for the purpose of making certain findings which appear to me very essential.

Now, there is one other matter; one other matter I also was anxious to ascertain a little more in connection with, the exact status of Mr. A. J. Greener——.

723 Mr. MCKEAG. Oh, yes.

Examiner AVERILL. And his relationship to the respondent, the Standard Education Society, and the——

Mr. WINN. Standard Encyclopedia Company.

Examiner AVERILL. Society, a corporation, and the Standard Encyclopedia Corporation——

Mr. WINN. Corporation.

Examiner AVERILL. And any other things that either of you gentlemen may desire. You will not be precluded. Those are the things I am particularly anxious to know something about. About the argument; about hearing you gentlemen next on the motion, that will be—we won't fill the record with the argument; we will go into that a little later; first let's see what we can do in regard to clearing up some of these matters that I have just referred to.

Mr. WINN. This off the record.
Examiner AVERILL. Yes.
(Colloquy between examiner and counsel not reported.)
Mr. WINN. Mr. Stamford.
A VOICE. Yes, sir.

H. M. STANFORD, a witness, having been previously sworn, was recalled for further cross examination:

Cross-examination continued by Mr. WINN:

724 Examiner AVERILL. Just give your name, Mr. Stamford; you been sworn previously?

A. Yes.

By Mr. WINN:

Q. Mr. Stanford, on page 3 or what would be page 3 of respondent's exhibit no. 6 under a heading: "What others say", we find several testimonials; one from Mr. Paul R. Byrne, reference librarian of the University of Notre Dame; can you tell me when Mr. Byrne made that testimonial?

A. Not precisely, but I should say three years ago, possibly four years ago.

Q. Was the new Standard Encyclopedia on the market at that time?

A. The work embodied in that was not issued under that name.

Q. On the back, on the contract which is marked "Respondent's Exhibit No. 2", we find exactly the same testimonial from Mr. Byrne except that he is referring to the Standard Reference Work as distinguished from his testimonial of the New Standard Encyclopedia in respondent's exhibit no. 6; when you say that he gave this testimonial some three years ago, you are referring to the testimonial that is on the back of the contract, respondent's exhibit no. 2 rather than for the purpose of this testimonial; I take it your organization changed the words, "Standard Reference Work" to New Standard Encyclopedia and published this leaflet with that testimonial in it?

A. Yes; there seems to be no difference in the testimonial, and, presumably, it is identical.

725 Q. But Mr. Byrne never made any other testimonial since approximately three years; since the first testimonial that was made by the Standard Reference Works?

A. Not to my knowledge.

Q. And the same is true regarding the other testimonials that are on this page, Mr. Stanford?

A. The same is true with the others.

Q. They were all, as they were received by the respondents in this case, that is the Standard Education Society,

they were all testimonials for the Standard Reference Work and no testimonials had been received from them for the New Standard Encyclopedia?

A. They were testimonials for the contents of the Standard Reference Work, and the contents of the New Standard Encyclopedia were the contents of the Standard Reference Work with the natural revisions that were made, only.

Q. Now regarding Mr. Greener, you tell us just what his duties are?

A. He is comptroller, auditor, and manager of the bookkeeping department.

Q. Are those all his duties?

A. That comprises everything that Mr. Greener does.

Q. What does "comptroller" include—does that include the ordinary functions of a comptroller——

A. Financial, entirely.

Q. Of a corporation?

726 Examiner AVERILL. Then do I understand you, that his duties, to put it briefly, are, that he has charge of the financial operations of the corporation, that is, the Standard Educational Society, and now, well, the style of the Standard Education Society—is that Standard——

Mr. WINN. Encyclopedia.

Examiner AVERILL. Standard Encyclopedia Corporation. You see what I am after? It appears now we know what your functions are; we know what Mr. Ward's functions were; I am anxious to understand what Mr. Greener's functions were in connection with those two corporations.

A. Mr. Greener's position is strictly that of an employee, although he is a stockholder in the corporation.

Examiner AVERILL. Yes.

Mr. WINN. Q. Did the collection department come under Mr. Greener's supervision as far as the fiscal work was concerned?

A. It does not; we have a separate collection manager that handles the accounts or the dealings with the subscribers.

Mr. WINN. Did you have any other questions, Mr. Examiner?

Examiner AVERILL. No; none.

Mr. MCKEAG. Will you furnish the examiner with a copy of the last edition of the Standard Reference Work and one of the present editions of the Standard Encyclopedia——

The WITNESS. I am quite willing to do that.

Mr. MCKEAG. As he requests.

727 Examiner AVERILL. I appreciate that. Is it also understood, gentlemen, that those books can be considered to be in evidence so as we can——

Mr. MCKEAG. Yes.

Examiner AVERILL. Refer to them.

Mr. McKeag. Sure.

Examiner Averill. That is the reason I want them.

The Witness. Is that a matter that is included in this complaint as to the contents of these books?

Mr. McKeag. They want them for some reason and they are entitled to them.

Examiner Averill. My reason is that there is so much talk in the evidence about representations as to the work being new that I would like to have an opportunity just to glance at and compare some articles in the Standard and form some idea——

Mr. McKeag. You really ought to have a set of the Standard Education Society's of some years ago, four or five years ago, to compare them; you ought to have three sets.

Examiner Averill. Well, that would be a herculean task.

Mr. McKeag. I thought you might want to go into it completely and I wanted to help you.

Examiner Averill. I was only trying to see the difference between the Standard Reference Work, this last edition and the new Standard Encyclopedia; that was the principal thing which I desired to look at.

728 Mr. McKeag. You understand that the evidence shows that the Standard Reference Work was revised.

Examiner Averill. Oh, yes.

Mr. McKeag. In part, from year to year.

Examiner Averill. Yes, sir.

Mr. McKeag. And that the Standard Encyclopedia is merely—may be somewhat the same as the last edition of the Standard Reference Work with only a few changes.

Examiner Averill. Yes.

Mr. McKeag. That is correct, isn't it?

A. That is right.

Mr. McKeag. Are you through, Mr. Winn?

Examiner Averill. One moment; I think there is one thing I want to ask Mr. Stanford; I want to ask the question——

Mr. Winn. Sir?

Examiner Averill. There isn't any use. As I understand it, Mr. Stanford, this circular, I will term it "Respondent's Exhibit No. 6", from the testimony heretofore given, I understand that this was put in the hands of your agents and representatives?

A. The salesmen.

Examiner Averill. Salesmen?

A. And they carried that with them.

Examiner Averill. As I understand the testimony to be, they carried this with them for the purpose of showing it, of course, to prospects?

729 A. Yes, sir; and subscribers.

Examiner AVERILL. That is what I understood. Was it or wasn't it also mailed out——

A. It looks as if it might have been.

Examiner AVERILL. To prospects whom you might have heard of one way or the other?

A. It might have been, but I do not know of its having been used in that way at all. I haven't any knowledge of its having been used in that manner. You see we did not do any business through advertising or mail compaigns. It is entirely through solicitors. It is possible that some may have been left with subscribers by the agents.

Examiner AVERILL. Would they have them to look them over?

A. I believe so.

Examiner AVERILL. And use this coupon if they desired to.

A. I believe it is the custom, particularly of those who sold in the home, that they left these with the woman to whom they talked, and then I suppose possibly they may get some returns by the mailing in of those coupons.

Examiner AVERILL. In other words, anyone that saw the coupon that they had—the pamphlet—it could be shown to the prospective customer, that is, the salesman could leave pamphlets and if the parties were interested why they could get in touch with the corporation by mailing this little card——

A. That probably was the custom.

730 Examiner AVERILL. This little coupon, I would say, instead a card.

A. That is put out by the sales department; I am not so very familiar just how they are using it.

Examiner AVERILL. Yes, sir. Let's see, Mr. Winn, I have covered this thing here. Mr. Stanford said he would let us have that; that is very nice of him; the things I asked about. That is the same thing in another form.

The WITNESS. Do you wish to have these exhibits or books delivered here today or do they have to be sent somewhere?

Examiner AVERILL. Well, just a matter of your convenience; of course, if you send them here then we will have to have them packed up and shipped to Washington, but if it is just as convenient to ship them over there; why if that could be done——

The WITNESS. It can just as well be done.

Examiner AVERILL. I would be very much obliged if you would just ship them to me, care of Federal Trade Commission——

The WITNESS. That can be done this afternoon.

Examiner AVERILL. At Washington, it would be very nice without having it come here——

The WITNESS. Yes, sir.

Examiner AVERILL. As I would have to arrange shipping it out some way; that will be very nice, indeed. Mr. McKeag, have you any questions you desire to ask the witness?

731 Mr. McKEAG. I would like to have a conference with you, Mr. Stanford for a minute, if you are all through.

Examiner AVERILL. Sure, take your time; ask him if you want to.

Mr. McKEAG. That is all right. Now, I don't think of anything further or anything else in behalf of the respondent at this time.

Examiner AVERILL. Now, Mr. McKeag, I should like to hear from you in connection with this motion; or your motion.

Mr. McKEAG. Need the reporter for that?

Examiner AVERILL. Not for the argument. So far as your motion is concerned; on page 25 of your motion is set out in detail where you move to strike from the records evidence and exhibits concerning Charles E. Knapp, concerning the——

Mr. McKEAG. The San Francisco——

Examiner AVERILL. The San Francisco office of the Standard Education Society.

Mr. McKEAG. Yes.

Examiner AVERILL. Giving your reasons for your motion.

(Argument to the examiner by Mr. McKeag, not reported.)

Examiner AVERILL. Now, have you any further testimony, Mr. Winn?

Mr. WINN. No.

Examiner AVERILL. Have you any further testimony.

732 Mr. McKEAG. No, no; I think not.

Examiner AVERILL. No further testimony?

Mr. McKEAG. No.

Examiner AVERILL. The trial examiner having heard the argument of counsel for the respondent relative to motion to strike, he will take the matter under consideration and within twenty days will make a ruling thereon, which ruling will be served upon counsel for the Commission and counsel for the respondent and thereafter the trial examiner will issue an order closing the case and after the closing of said case, the trial examiner will proceed in accordance with the rules, practice, and procedure and make and file his record for the Commission.

(ALL EXHIBITS FILED SEPARATELY AS PHYSICAL EXHIBITS.)

UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION

Docket 1574

IN THE MATTER OF STANDARD EDUCATION SOCIETY ET AL.

ORDER CLOSING CASE

Taking of testimony in this cause having been concluded and ruling having been made upon respondent's motion to strike certain portions of said testimony, and there being no further testimony offered,

Now, therefore, the taking of testimony and the receipt of evidence is concluded and the case is closed and the trial examiner will proceed in accordance with the rules and procedure established by the Commission to make and serve upon counsel his finding of facts.

EDWARD M. AVERILL,
*Trial Examiner.*

WASHINGTON, D. C., *September 22, 1930.*



U. S. GOVERNMENT PRINTING OFFICE: 1930

United States Circuit Court of Appeals, Second Circuit

Index No. 14517

FEDERAL TRADE COMMISSION, PETITIONER

*vs.*

STANDARD EDUCATION SOCIETY, STANDARD ENCYCLOPEDIA CORPORATION, H. M. STANFORD, W. H. WARD, AND A. J. GREENER, RESPONDENTS

SIR: Please take notice that upon the Transcript of the Record and the Application for the Enforcement of an Order of the Federal Trade Commission filed in this court on the 20th day of January 1936; and upon the annexed affidavit of Henry Ward Beer, Esq., dated and sworn to the 13th day of May 1936, the individual respondents, H. M. Stanford, W. H. Ward, and A. J. Greener, by their attorney, Henry Ward Beer, Esq., will at a stated term of this court appointed to be held for the hearing of motions on the 8th day of June 1936 at the Federal Courthouse, Foley Square, City and State of New York, at the opening of court on said day or as soon thereafter as counsel can be heard, move to dismiss the Application for Enforcement of the Order of the Federal Trade Commission as against H. M. Stanford, W. H. Ward, and A. J. Greener, individually, and to set aside said order of the Federal Trade Commission to cease and desist entered December 24, 1931, as against said Stanford, Ward, and Greener, individually, upon the following grounds:

"(a) It appears upon the face of the Commission's original complaint and of its supplemental complaint that no unfair methods of competition or violation of Section 5 of the Federal Trade Commission Act are alleged therein against the said Stanford, Ward, and Greener as individuals.

"(b) It appears upon the pleadings, testimony, and proceedings set forth in the transcript of the record on file herein that there is no evidence whatever to support the alleged findings of facts and order against said Stanford, Ward, and Greener, individually."

and for such other and further relief as to this court may seem just.

Yours, etc.

HENRY WARD BEER,
*Attorney for Respondents, Office & P. O. Address,*
*No. 29 Broadway, New York City.*

Dated MAY 13, 1936.

To:

WILLIAM T. KELLEY, ESQ.,
*Chief Counsel, Federal Trade Commission,*
MARTIN A. MORRISON, ESQ.,
*Assistant Chief Counsel,*
JAMES W. NICHOL, ESQ.,
*Attorneys for Petitioner, Office & P. O. Address,*
*Federal Trade Commission, Washington, D. C.*

In the United States Circuit Court of Appeals, Second Circuit

Index No. 14517

FEDERAL TRADE COMMISSION, PETITIONER

*vs.*

STANDARD EDUCATION SOCIETY, STANDARD ENCYCLOPEDIA CORPORATION, H. M. STANFORD, W. H. WARD, AND A. J. GREENER, RESPONDENTS

UNITED STATES OF AMERICA,
*State of New York, County of New York, ss:*

Henry Ward Beer, being duly sworn, deposes and says:

1. He is the attorney for all of the above-named respondents. He makes this affidavit in support of a motion to dismiss the Federal Trade Commission's application for enforcement of its cease and desist order herein as against respondents H. M. Stanford, W. H. Ward, and A. J. Greener, individually and to set aside the said cease and desist order against said Stanford, Ward, and Greener, individually, upon the following grounds:

"(a) It appears upon the face of the Commission's original complaint and of its supplemental complaint that no unfair methods of competition or violation of Section 5 of the Federal Trade Commission Act are alleged therein against the said Stanford, Ward, and Greener as individuals.

"(b) It appears upon the pleadings, testimony, and proceedings set forth in the transcript of the record on file herein that there is no evidence whatever to support the alleged findings of facts and order against said Stanford, Ward, and Greener individually."

2. Each of the individual respondents has heretofore duly objected before the Federal Trade Commission to his being made a party respondent herein and set forth his objections in his respective sworn answer, but to no avail.

3. The present motion is timely. If granted, it will properly limit the consideration of the issues to the corporate respondents only, and is therefore made in advance of respondents' answer to the Commission's application for enforcement of its alleged order. Said motion is made without prejudice to all of the respondents' rights so to answer should the court deny the present motion, or for the remaining respondents to answer should the court grant the present motion.

Summary of proceedings to date

4. On February 25, 1929, the Commission issued its complaint against respondent Standard Education Society and the respondent H. M. Stanford, individually and as President thereof, charging the use of unfair methods of competition in interstate commerce in violation of Section 5 of the Federal Trade Commisison Act in offering for sale and selling in such commerce, encyclopedias or reference

works and extension services in connection therewith, and home study courses of instruction (R. 2). The charges in said complaint relate solely to acts alleged done by the corporation and state no charge in respect to H. M. Stanford's individual acts upon which a violation of said Section 5 was predicated. Its sole allegation concerning said Stanford is that he is President, General Manager, and principal owner of the stock of Standard Education Society.

5. Thereafter on March 28, 1929, respondents, Standard Education Society and H. M. Stanford, field their separate answers to said complaint. The said Stanford denied that he, individually, was engaged in interstate commerce or did or directed any of the acts complained of in said complaint. He admitted that he was President and General Manager of Standard Education Society and stated that he was a stockholder thereof.

6. Testimony was taken before the examiners of the Commission and reduced to writing, but no evidence was taken against the said Stanford as an individual respondent.

7. Thereafter on December 4, 1929, the Commission issued its supplemental complaint against respondents Standard Education Society, Standard Encyclopedia Corporation, and H. M. Stanford, W. H. Ward, and A. J. Greener, as individuals, making a general charge of the use of unfair methods of competition in interstate commerce in violation of Section 5 of the Federal Trade Commission Act against all respondents jointly. The joint charges in said supplemental complaint relate solely to acts alleged done by the corporation respondents in the publication and sale of books, and state no charges in respect to any individual acts or conduct on the part of H. M. Stanford, W. H. Ward, or A. J. Greener upon which may be predicated a violation of said Section 5 of the said Federal Trade Commission Act against the said individuals. Its sole allegations concerning said H. M. Stanford, W. H. Ward, and A. J. Greener as individuals are that:

"Paragraph One. * * * Respondent, H. M. Stanford is president and general manager, a director, and principal owner of the stock of Standard Education Society and president of respondent Standard Encyclopedia Corporation. * * *

"* * * Respondent W. H. Ward is secretary, a director, and a stockholder of respondent Standard Education Society. Respondent A. J. Greener is a stockholder and a director of Standard Education Society. Respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the directors and sole stockholders of the respondent Standard Encyclopedia Corporation [R. 21]."

8. Thereafter the respondents, Standard Encyclopedia Corporation, W. H. Ward, and A. J. Greener filed their separate answers to said supplemental complaint. Said Ward denied that he individually was engaged in interstate commerce, or did or directed any of the acts complained of in said complaint. He admitted that he was a secretary and director of the Standard Education Society and a director of the Standard Encyclopedia Corporation [R. 29–31]. A.

J. Greener in an amended answer, denied that he individually was engaged in interstate commerce, or that he did or directed any of the acts complained of in said supplemental complaint. He denied that he was director of the Standard Education Society or of the Standard Encyclopedia Corporation [R. 32–33].

9. Hearings were thereafter had and testimony was taken to support the charges stated in the original and supplemental complaints and in opposition thereto, but no evidence was taken or submitted that established any charge against said individuals.

10. On December 24, 1931, the Commission made and entered its report in which it stated its alleged findings as to the facts and its alleged conclusions based thereon, and on the same day issued its order to cease and desist against H. M. Stanford, W. H. Ward, and A. J. Greener individually as well as against the corporation respondents requiring each of them, their officers, agents, representatives, and employees to cease and desist from selling publications and home study courses of instruction in the manner proscribed in the Order.

11. Subsequent to the service on December 28, 1931, of the said Order, the respondents filed with the Commission their report as to compliance. The individual respondents denied any personal participation in the acts charged and reported as follows:

"That the respondents H. M. Stanford, W. H. Ward, and A. J. Greener are not, and have not, jointly or severally, been engaged in, nor have either of them any officers, agents, representatives, or employees in connection with the offering for sale of any books, sets of books, or publications, or offering any home study course of instruction, in commerce among the several states of the United States, or in the District of Columbia, nor have either of them, jointly or severally, any intention of engaging in said business, and therefore, cannot file a report in writing setting forth in detail the manner and form in which the order to cease and desist has been or will be complied with or confirmed to."

(N. B. The compliance report of which the foregoing is a part, was not included in the transcript of the record filed. Certified copies of the report will be submitted to the court on the argument of the motion.)

12. On January 20, 1936, the Federal Trade Commission filed in this court its present application for the enforcement of its said order to cease and desist against both the corporate and individual respondents alleging that:

"Respondents, Standard Education Society, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener have failed and neglected to obey said order to cease and desist [p. 9—Commission's Application]."

No Unfair Methods Pleaded Against Individuals

13. It appears upon the face of the Commission's original complaint and of its supplemental complaint that no unfair methods of competition or violation of Section 5 of the Federal Trade Com-

mission Act are alleged therein against said Stanford, Ward, and Greener as individuals.

A. The only allegations in either the original or supplemental complaints which purport to connect the individual respondents as such with the alleged violation of Section 5 of the Federal Trade Commission Act are those relating to the stock ownership of the said individual respondents in the corporation respondents and the allegations that the individual respondents are officers and directors of said corporation respondents.

B. All the charges contained in the Commission's complaints are specifically directed against acts of the corporations. There are no charges of any conduct or acts on the part of the individual respondents other than such as can be inferred from their positions as officers of the corporations.

C. There are no charges in the complaints that the individual respondents personally did or directed the alleged acts constituting the unfair methods of competition or that said individuals in any way exceeded their authority as officers and directors of the corporations.

D. There are no charges in the complaints that the individual respondents are deriving any personal benefit from the corporations' alleged acts complained of, or that the individual respondents are making use of sham corporations to shield themselves from liability for their own wrongs, or that the corporations are irresponsible for their alleged misconduct.

E. There are no charges in the complaints that the corporations are mere creatures of the individual respondents.

14. Deponent respectfully represents that it is well settled that personal liability of stockholders, corporation officers, and directors to an injunction cannot be predicated simply upon the mere facts that they are officers, directors, and stockholders of the offending corporation.

15. The Commission by its complaints, sought a joint order against each of the individual respondents and each of the corporate respondents. But in its complaints, the Commission makes the charge of unfair methods of competition generally without alleging the specific acts of Stanford, Ward, and Greener in their individual capacities that are relied upon by the Commission to establish against each individual, the unfair methods of competition in question. Without such particular allegations, no individual liability is possible, and for this reason, the order of the Federal Trade Commission now before the court is invalid to the extent that it attempts to enjoin the said individual respondents.

The Testimony is Void of All Proof Upon Which To Base Any Liability Against the Individual Respondents for Acting in Their Individual Capacities

16. Deponent further says that it appears upon the pleadings, testimony, and proceedings set forth in the transcript of the record

on file herein that there is no evidence whatever to support the alleged findings of facts and order against the said Stanford, Ward, and Greener, individually. No personal decree is possible.

17. The Commission submitted no evidence whatever upon which it can rely to prove that the individual respondents have done anything as individuals to justify an order to cease and desist against them as such. This is not a case of weighing the evidence or determining the preponderance of the credible evidence against a respondent. But it is clearly a case of a complete absence of evidence to support the alleged findings as to the facts and the order to cease and desist in so far as the individual respondents are concerned.

The testimony that appears in the record has no bearing upon the individual respondents' connection in their individual capacities with the charges of unfair methods of competition alleged in the complaint, but relates only to:

"(a) The said individuals' bare ownership of stock of the Standard Education Society, one of the corporation respondents.

"(b) The positions as officers and directors held by two of the three individual respondents, Stanford and Ward in the Standard Education Society and the Standard Encyclopedia Corporation.

"(c) The fact that the individual respondents admitted that they organized for and on behalf of the Standard Education Society, the non-profit and no-stock corporation called Standard Encyclopedia Corporation, which latter corporation did no selling or financing and was merely used as a trade department of Standard Education Society."

*Stock Ownership*

18. All the testimony that relates to stock owned by the individual respondents is found in the testimony of the individuals themselves and such ownership does not prove or tend to prove any of the charges alleged in the complaints.

19. Deponent represents that stockholders cannot be held liable for corporate acts solely by reason of their stock ownership, and that therefore the fact that the individual respondents at the time of the hearings before the Commission owned the outstanding stock, does not render them individually subject to the cease and desist order.

20. The evidence adduced at the hearings was inconclusive even as to the stockholdings. It showed that at the time the individual respondents testified, their stockholdings were as follows: H. M. Stanford—250½ shares (R. 382); W. H. Ward—250½ shares (R. 424) and A. J. Greener—35 shares (R. 426), and that the 536 shares represented all the outstanding stock at that time (R. 406). It is significant that although the unfair methods of competition alleged by the Commission in its complaint were charged to have been done during a period beginning more than five years prior to the issuance of the original complaint on February 27, 1929, up to the date of

the issuance of the supplemental complaint, December 4, 1929, there is no testimony as to who owned stock in the Standard Education Society during that time, nor what the extent of the stockholdings were.

Mr. Stanford testified that up to the beginning of 1929, there were numerous stockholders:

"Q. [By Mr. WINN, Commission's attorney.] Now, as to the stock in the Standard Education Society, Mr. Stanford, who holds the other stock except your own and how much do they hold?

"A. Up till quite recently there were quite a number of stockholders who were sales directors or managers or salesmen in the field that held some stock, but during the early part of this year [1929] that stock was gradually bought in, except for the shares that are held by myself, Mr. Ward, and Mr. Greener [R. 406]." [Parenthetical matter supplied.]

Standard Education Society An Old Established Publishing Corporation

21. The testimony proves that the respondent, Standard Education Society, is an onl established book publishing house and that one of its many activities is compiling, publishing, and selling an encyclopedia and an extension service connected with it (R. 379, 380, 381).

22. All testimony points directly to one conclusion regarding the activities of the individual respondents here—they were of the character usually found to be carried on by officers in similar positions of similar corporations. Nothing appears in the record to even indicate that the individuals, Stanford, Ward, and Greener did anything other than what is customarily performed by officers in positions similar to those they held in the corporation respondents.

23. Mr. Stanford testified (R. 379) that the Standard Education Society which had published the Standard Reference Work, was incorporated in 1909 under the name of Welles Brothers Publishing Company and began distributing what was then known as Aiton's Encyclopedia in 1910. After about a year and a half, the name of the encyclopedia was changed to Standard Reference Work. The name of the corporation was changed to Standard Education Society in 1917, and the corporation has been in the publishing business for a period of about 27 years.

H. M. Stanford's Connection With the Corporation Respondents

24. Mr. Stanford has been associated with the Standard Education Society since 1910 when it was called Welles Brothers Publishing Company (R. 381).

25. At the time of the taking of the testimony in 1929, Mr. Stanford was President of the Standard Education Society (R. 379).

26. Mr. Stanford testified that the Standard Education Society was engaged in many activities.

"Q. [By Mr. WINN.] I see. Now as I understand it, the Standard Education Society at the present time is engaged in publishing an encyclopedia, is that correct?

"A. Among its other—among various activities.

* * * * * * *

"Q. It also publishes an extensive service that continues in connection with its encyclopedia for a number of years?

"A. Yes.

"Q. And that extension service consists of leaflets or pamphlets that are kept up-to-date as things are done in the world, current events, so as to provide the encyclopedia which is published by the Standard Education Society with a means of keeping up-to-date?

"A. Yes, sir (R. 381)."

27. Mr. Stanford explained (R. 399) that he was not connected with the distribution of the books at all.

"Q. [By Mr. WINN.] You are only connected with the publishing company?

"A. Yes; with general administrative and publishing.

* * * * * * *

"Q. Yes; although your particular work was administrative rather than distributive, so far as these books were concerned?

"A. Yes (R. 399)."

28. As to his individual participation in the activites of the corporation respondents, Mr. Stanford testified:

"Q. [By Mr. MCKEAG, attorney for respondents.] Are you connected with the Standard Education Society and the Standard Encyclopedia Corporation?

"A. Yes.

"Q. What is your connection with those companies?

"A. President of them.

"Q. Except as the chief presiding officer of those companies, are you engaged in business individually?

"A. In this line, do you mean?

"Q. In this line.

"A. No.

"Q. All of your activities are confined as president on behalf of these respective corporations, is that correct?

"A. That is correct.

"Q. Do you in your individual capacity have anything to do with the employing of salesmen or handling the accounts—sales accounts—of the Standard Education Society or the Standard Encyclopedia Corporation?

"A. No (R. 429)."

W. H. Ward's Connection With the Corporation Respondents

29. Deponent represents that absolutely nothing appears in the record to connect W. H. Ward with any activity in his individual

capacity. His work was nothing other than that which is usually carried on by a sales manager of a large corporation who directs a sales force of 400 or 500 persons (R. 433).

30. Mr. Ward stated that he was Secretary and owned 250½ shares of the stock of the Standard Education Society; that he was a director of the Standard Encyclopedia Corporation (R. 424); and that he was a director and had charge of most of the sales work of the Standard Education Society (R. 424). He further stated that the agents who work for the Standard Education Society come directly under his care as an officer of the corporation; that there are about 400 or 500 different agents a year and that an average of 100 agents are employed at a time (R. 453).

31. As to his personal activity, Mr. Ward specifically testified as follows and no testimony appears to the contrary:

"Q. [By Mr. McKeag.] Are you engaged in the sale of books, encyclopedias, and Standard Reference Work, and so forth, individually?

"A. Not at all.

"Q. Or are you selling them as secretary or director of the company?

"A. All of my work is connected with the Standard Education Society.

"Q. All the work you do is on behalf of the Standard Education Society?

"A. Yes (R. 453)."

A. J. Greener's Connection With the Corporation Respondents

32. Deponent submits that an examination of the testimony of respondent, A. J. Greener, found on less than one page of the transcript of the record (R. 426–427), reveals that his position in the corporation is strictly that of an employee. At the time the testimony was taken, he owned 35 shares of stock in the Standard Education Society, but was not a director of either Standard Education Society or Standard Encyclopedia Corporation (R. 426–427). He was one of the incorporators of the Standard Encyclopedia Corporation (R. 427). He testified:

"Q. [By Mr. Winn.] And what is your occupation, Mr. Greener?

"A. I am an employee of the Standard Education Society (R. 426)."

33. Mr. Stanford also testified (R. 467) that Mr. Greener was but an employee and this fact remains uncontradicted:

"Q. [By Mr. Winn.] Now regarding Mr. Greener, you tell us just what his duties are?

"A. He is comptroller, auditor, and manager of the bookkeeping department.

"Q. Are those all his duties?

"A. That comprises everything that Mr. Greener does.

* * * * * * *

"Q. [By Mr. AVERILL, Commission's Examiner.] I am anxious to understand what Mr. Greener's functions were in connection with those two corporations.

"A. Mr. Greener's position is strictly that of an employee, although he is a stockholder in the corporation.

"Q. [By Mr. WINN.] Did the collection department come under Mr. Greener's supervision as far as the fiscal work was concerned?

"A. It does not; we have a separate collection manager that handles the accounts or the dealings with the subscribers (R. 467)."

34. Deponent represents that the testimony as to Mr. Greener is conclusive that although he owned 35 shares of stock of one of the corporate respondents, his position was that of a chief bookkeeper and his activities were such as are generally done by the head bookkeeper of any large corporation and were as far removed from the acts alleged in the complaints as possible.

The Incorporation of the Standard Encyclopedia Corporation

35. It appears that the Commission unjustly seeks to predicate personal liability upon the individual respondents by reason of the fact that they were the incorporators of the Standard Encyclopedia Corporation. The Commission presumably hopes by this fact to create the impression in the mind of the court that the corporation was merely a creature of the individuals. The testimony dispells any such idea and clearly establishes that the Standard Encyclopedia Corporation was a non-profit, no-stock, eleemosynary corporation organized by the individual respondents for and on behalf of the Standard Education Society solely for the latter's benefit and corporate uses. Not a single word or writing in the testimony disputes this fact.

36. The Standard Encyclopedia Corporation was organized in August 1929, and was merely a trade department of the Standard Education Society, which continued to be the sole financial and real entity.

37. A careful reading of the following testimony of Mr. Stanford, which is all of the proof in this case regarding the incorporation of the Standard Encyclopedia Corporation, demonstrates that it could not have been organized, and was not organized, for any purpose except the purpose testified to by Mr. Stanford. Not one word of testimony appears to justify any inference or conclusion that this corporation was organized by anyone other than the Standard Education Society for its own corporate benefit and use. Not a word of testimony is submitted by the Commission to prove that the Standard Encyclopedia Corporation was organized to evade an order of the Commission, as the Commission assumes to find as a fact. Such finding is without any proof to support it, and cannot stand. Mr. Stanford's testimony which follows has not been contradicted:

"Q. [By Mr. WINN] Mr. Stanford, with regard to the Standard Encyclopedia Corporation, is that organization engaged in publishing books?

"A. Well, instead of answering that question specifically, I think I would like to explain just exactly the status of that corporation, if I may, in my own way.

"Q. As far as I am concerned, that is all right, sir.

"A. In the summer when we decided to eliminate the two volumes of teacher material that were in the old Standard Reference Work, which gave rise to our having called it the Standard Reference Work in the first place and not an encyclopedia, we extended the scope of the work and enlarged it to ten volumes of strict encyclopedia matter, and it seemed more appropriate that we should call it an encyclopedia. We liked the name 'Standard' since we had always used it, and we decided to call it the New Standard Encyclopedia.

"We intended at that time to change the name of the corporation, as we had done earlier, to Standard Encyclopedia Corporation, but there were complications on account of our banking arrangements and our financing, so that we could not do it at that time, but in putting out the new set under the name 'New Standard Encyclopedia' we wanted to start at once to use the name 'Standard Encyclopedia Corporation', so we applied to Springfield for the right to use that corporate name, and we were told that was available, so we were incorporated with the three present stockholders of the Standard Education Society as incorporators, in August, and we——

"Examiner AVERILL. What year?

"A. This last year, just a few months ago.

"Q. 1929?

"A. Yes; August 1929 (R. 403–404)."

Mr. Stanford further testified:

"* * * this Standard Encyclopedia Corporation is really at the present time a trade department of the Standard Education Society. The Standard Education Society is the financial entity and handles all of the business, owns everything, collects all the accounts and does everything of a financial character at this time, and will do so until such time as it is possible for us to change the name of Standard Education Society to Standard Encyclopedia Corporation. There is no different company, fundamentally, there, nor is there any different people in charge. It is the same thing (R. 405)."

38. Deponent respectfully submits that no basis for an inference of individual activity is possible from the fact of the incorporation of the Standard Encyclopedia Corporation. There is a complete failure of any proof whatever to support any finding to the contrary.

*The Record Reveals No Testimony to Support Personal Liability*

39. There is in the record no proof or pretense of proof of any conduct or acts on the part of the individual respondents other than

such as can be inferred from their positions as officers and directors of the corporation respondents. Indeed, one of the individual respondents, A. J. Greener, was not an officer nor a director of either corporation but merely the head bookkeeper and the owner of thirty-five shares of stock of the Standard Education Society.

40. There is in the record no proof nor pretense of proof that the individual respondents did or directed any of the alleged acts constituting the unfair methods of competition or that the individuals in any way exceeded their authority as officers, directors, and employees of the corporation respondents.

41. There is in the record no proof nor pretense of proof that the individual respondents derived any personal benefit from the corporations' alleged acts complained of; or that the individual respondents made use of sham corporations to shield themselves from their own wrongs; or that the corporation respondents are irresponsible for their alleged conduct.

42. There is in the record no proof nor pretense of proof that the corporations were mere creatures of the individual respondents.

43. Deponent respectfully represents, therefore, that the record reveals a complete lack of evidence upon which the individual respondents may be subjected to a cease and desist order. Certainly, under such circumstances, no answer to the Commission's application should be required of these individual respondents. Their names should be struck from the desist order by this motion.

CONCLUSION

44. Upon the face of the Commission's original complaint and of its supplemental complaint, no unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act are alleged against H. M. Stanford, W. H. Ward, and A. J. Greener in their individual capacities, and it therefore follows that the complaints cannot be sustained, and the Commission's present application should be dismissed as to each of them as individuals. This ground is adequate in and of itself to warrant the granting of this motion. The complaints being insufficient to state unfair methods of competition against said individuals, it would be unjust and contrary to the fixed modes of legal procedure to require them to answer the Commission's pending application.

45. The second ground of this motion to dismiss the Commission's application for enforcement of its order is fully established by the foregoing analysis of the testimony. The record herein demonstrates a total deficiency of proof of any activities by said Stanford, Ward, and Greener in their individual capacities. This complete failure to produce any evidence against the individual respondents should constrain the court, in accordance with Section 5 of the Federal Trade Commission Act, to dismiss the Commission's application as to the said individual respondents.

46. Since it clearly appears that there is no foundation to justify the court either in law or in fact to sustain the Commission's order to cease and desist against the individual respondents, the motion should be granted.

Wherefore, deponent prays this honorable court to dismiss the Commission's application for the enforcement of its cease and desist order herein as against H. M. Stanford, W. H. Ward, and A. J. Greener individually, and to set aside the said cease and desist order against the said H. M. Stanford, W. H. Ward, and A. J. Greener individually, and

Further prays that if this honorable court deny said motion, that it grant all the respondents at least thirty [30] days from the date of the court's order on its decision herein in which to submit their answers to the Commission's pending application.

HENRY WARD BEER.

[SEAL] BELLE A. LAUB.

Sworn to before me this 13th day of May 1936. Belle A. Laub, Notary Public, Kings County No. 488, Reg. No. 7193, Cert. filed in N. Y. Co. No. 445. Reg. No. 7-L-249. Commission expires March 30, 1937.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 15th day of June, one thousand nine hundred and thirty-six.

Present: Hon. MARTIN T. MANTON, Hon. AUGUSTUS N. HAND, Hon. HARRIE B. CHASE, Circuit Judges.

FEDERAL TRADE COMMISSION, PETITIONER

vs.

STANDARD EDUCATION SOCIETY, ET AL., RESPONDENTS

A motion having been made herein by counsel for the respondents to dismiss the application for the enforcement of the order of the Federal Trade Commission as against H. M. Stanford, W. H. Ward, and A. J. Greener, individually, and for other relief; upon consideration thereof it is ordered that said motion be and hereby is denied.

WM. PARKIN, *Clerk.*

United States Circuit Court of Appeals, Second Circuit. Federal Trade Commission *vs.* Standard Education Society, et al. Order. United States Circuit Court of Appeals, second Circuit. Filed Jun. 15, 1936. William Parkin, Clerk.

United States Circuit Court of Appeals for the Second Circuit

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

STANDARD EDUCATION SOCIETY, ET AL., RESPONDENTS

(December 14, 1936)

Before L. HAND, SWAN, and CHASE, Circuit Judges.

On petition by the Federal Trade Commission for an order to enforce its own order to "cease and desist" from certain "unfair methods of competition."

MARTIN A. MORRISON for the Commission
HENRY WARD BEER for the respondents.

L. HAND, Circuit Judge: This case comes up upon a petition under § 45 of Title 15, U. S. Code, for an "enforcement order" upon an order to "cease and desist" of the Federal Trade Commission against the five respondents, two companies and three individuals. The Standard Education Society is a company which published and sold an encyclopedia called "Standard Reference Work"; the Standard Encyclopoedia Corporation is a subsidiary, or dummy, of that company. Stanford is the president and a director, and acted as general manager, of both companies, and is the owner of 250½ out of the Education Society's 536 shares of stock; Ward is the secretary, a director of both, has charge of sales and owns the same number of shares as Stanford; Greener owns the remaining thirty-five shares, and is in charge of financial matters as comptroller and auditor. On February 25, 1929, the Commission filed a complaint against the Education Society and Stanford, alleging certain unfair trade practices; they answered, and a supplemental complaint was filed on December fourth, 1929, in the same terms, but joining the Encyclopoedia Company and Ward and Greener, all of whom answered. Meanwhile the taking of testimony had begun on May 8, 1929, and was continued until June 20, 1930; and on the twenty-fourth of December, 1931, the Commission filed its findings of fact and the order to cease and desist now before us. In the findings it appears that the Education Society was incorporated in 1909 under another name and published and sold a work called "Aiton's Encyclopoedia", whose title was changed in 1912 to "Standard Reference Work." This was in ten volumes, intended to be kept up to date by a series of loose leaf supplements—called an "extension service"—which were to be sent to subscribers quarterly for ten years, and embodied, or assumed to embody, the latest information. Stanford, Ward, and Greener organized the Encyclopoedia Company in August 1929, and changed the name of the old work to the "New Standard Encyclopoedia"; but the Education Society is still disposing of some

remaining sets of "The Standard Reference Work", while the Encyclopoedia Company is selling the encyclopoedia. The ordinary price of each is $69.50, and includes the "extension service"; when works of fiction are thrown in, as they sometimes are, the price is $89. It was the uniform practice upon taking subscriptions, for agents to tell buyers that the set of books was given away, and that only the service was paid for; it was the common practice to say that the regular price of the books and service was considerably higher than the offers, at times $150 or $200; it was not infrequently said that the work could take the place of such magazines as the Literary Digest and the Review of Reviews. The originals of some of the testimonials used in selling the books were redrafted, some had never been authorized, and some had originally been issued to cover "Aiton's Encyclopoedia"; the names of some person were advertised as contributors who had never contributed. The respondents also offered a course of instruction which they called "Special Introductory Enrollment", and for which they charged at first $98, and finally $135. The agents represented to the purchaser that these were "special introductory prices", the usual price of the course being $250; and that the special price was given to ten students only; all of which was false.

The order to "cease and desist" included all the respondents, and forbad kinds of trade practices, as follows: The first clause forbad representaing the ten books as given free and only the service as paid for; the second forbad representing that some of the sets were delivered to selected persons; the third was in substance the same as the first; the fourth forbad representing the work as "a recently completed, new, and up-to-date encyclopedia"; the fifth, offering the same work for sale under two names; the sixth, representing its usual price as higher than that at which it was offered; the seventh, representing any person as a contributor who was not a contributor; the eighth, representing any person as giving a testimonial who had not done so; the ninth, publishing other testimonials than those actually given; the tenth, representing the course of instruction as a "Special Introductory Enrollment" at a special reduced price. Nothing was done to enforce this order until January 20, 1936, when the petition at bar was filed; the respondents answered on the first of October, repeating the allegations of their original answer, and praying that the application be dismissed, and that "the order to cease and desist herein be vacated and set aside." Treating this part of the answer as a cross petition of the respondents to vacate the order to cease and desist, the Commission styled its brief an answer. The preliminary question of procedure so raised we will dispose of at once. We held in Fed. Trade Com. v. Balme, 23 F. (2) 615, that upon a petition for enforcement under § 45 of Title 15, we would review the correctness of the order before considering the issue of compliance; so that once a petition to enforce the order is filed, it is not necessary for the respondent to file a petition for review. The prayer of the respondents' answer here that the order

to cease and desist be vacated, was therefore entirely proper in the answer because the Commission had already invoked the preliminary inquiry; and the answer should not have been regarded as a cross petition to review the order. The Commission need not have filed any answer to it, and so far as its brief is entitled an answer, it will be stricken.

The first question is as to the proprietary of any order whatever against the individual respondents. Stanford and Ward were jointly in complete control of both companies; as we have said, Stanford was not only president, but acted as general manager, and he was shown to have personally conducted the correspondence. Ward was sales manager, and necessarily familiar with what advertisements went out, and with the general sales policy of the company. This was enough to hold each personally for any "unfair" advertisements or sales methods, with certain exceptions to be noted later. The same is not true of Greener who, being merely the auditor and in charge of the companies' finances, would have little or nothing to do directly with trade practices. The doctrine applicable to patent infringements controls; it is not enough that an individual be a director or an officer of the infringing corporation; he must be shown to have had such connection with the wrong as would have made him an accomplice were it a crime, or a joint tortfeasor, were the corporation an individual. However, when that is done, his office will not protect him. National Cash Register Co. v. Leland, 94 Fed. Rep. 502, 507–512 (C. C. A. 1); Hitchcock v. American Plate Glass Co., 259 Fed. Rep. 948, 952–954 (C. C. A. 3); Denominational E. Co. v. Duplex E. Co., 80 F. (2) 186, 194 (C. C. A. 4). If the opinion in Dangler v. Imperial Machine Co., 11 Fed. (2) 945 (C. C. A. 7), means more than this, we cannot go along. Our dictum in New Departure Mfg. Co. v. Rockwell Drake Co., 287 Fed. Rep. 328, 334, was not meant to declare that so long as an official acted within the scope of his authority he was immune; the contrary had just been decided in Guarantee Vet. Co. v. Federal Trade Commission, 285 Fed. Rep. 853, 860 (C. C. A. 2).

The respondents insist that the forbidden practices were not shown to have affected interstate competition. It would take little evidence to satisfy us that a company publishing, and distributing generally throughout the country, an encyclopedia or reference work, was in competition with other similar works; perhaps we might take judicial notice of that without any evidence at all. But Stanford in substance admitted that other works competed with his, and the pleadings had foreclosed the issue anyway. The first article of the complaint alleged that the respondents were "in competition with other corporations, individuals, firms, or partnerships likewise engaged in the sale and distribution in interstate commerce of books, encyclopedias, and reference works, and so-called extension service in connection therewith." The answer of the Education Society did indeed deny that it used unfair methods of competition in interstate commerce, and that any of the methods alleged were unfair; but it did

not deny that it was engaged in interstate commerce, or that there were others with whom it competed. Stanford's answer was like that of the Education Society, except that he denied "that he individually or as president * * * is in competition with other corporations." We read this a meaning merely that his relations with the Society did not charge him personally with its doings; not that if it was engaged in competition and he was chargeable with its conduct, he was not engaged in the same competition. The answer of the Encyclopedia Company was like that of the Education Society, and Ward's answer was like Stanford's.

Coming now to the practices forbidden, the first and third clauses of the order were in substance the same; they forbad representing that the ten books were given away and that only the "extension service" was sold. It is true that the Commission is not to sanction unfair trade practices merely because they are of long standing; its duty is to bring trade into harmony with fair dealing. Federal Trade Com. v. Winsted Hosiery Co., 258 U. S. 483, 493, 494. To the discharge of that duty it should not, however, bring a pedantic scrupulosity; too solicitous a censorship is worse than any evils it may correct, and a community which sells for profit must not be ridden on so short a rein that it can only move at a walk. We cannot take seriously the suggestion that a man who is buying a set of books and a ten years' "extension service", will be fatuous enough to be misled by the mere statement that the first are given away, and that he is paying only for the second. Nor can we conceive how he could be damaged were he to suppose that that was true. Such trivial niceties are too impalpable for practical affairs, they are will-o'-the-wisps, which divert attention from substantial evils. Winston Co. v. Fed. Trade Com., 3 F. (2) 901 (C. C. A. 3). It is possible to read Consolidated Book Publishers v. Fed. Trade Com., 53 F. (2) 942 (C. C. A. 7), as holding to the contrary, but the case was complicated by a number of graver practices which probably colored the whole. We are not satisfied that stripped of these, the bare practice would have been held bad; if so, we prefer to follow the Third Circuit.

The second clause of the order forbad representing the work as given away to selected persons among them the prospective buyer was one. This is supported by evidence, and is the misrepresentation of a fact, though perhaps it would not support an action of fraud. The common-law was not over-solicitous to protect an unwary buyer; but there can be no doubt that such statements give a competitive advantage to the less scrupulous seller and that they not only add nothing to the buyer's opportunities to buy wisely, but hold out to him false inducements. The Commission has a wide latitude in such matters; its powers are not confined to such practices as would be unlawful before it acted; they are more than procedural; its duty in part at any rate, is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progres-

sively develop. Federal Trade Com. v. Raladam Co., 283 U. S. 643, 647–649; Federal Trade Com. v. Keppel, 291 U. S. 304, 310–312.

The fourth clause forbad calling the work a "recently completed, new, and up-to-date encyclopoedia." The findings scarcely support so broad a prohibition; the fifteenth says that the respondents have represented the "New Standard Encyclopoedia" as "Something new under the sun," when it was only a revise of the old "Standard Reference Work" with new supplements to bring it up to date. Of course nobody in his senses supposes that an encyclopoedia had not used earlier works as sources; but it seems to us that he might assume that it has been rewritten, perhaps throughout. Had the encyclopoedia professed to be no more than a new edition of the "Reference work," a buyer might not have been justified in assuming that it was rewritten, but it professed to be a new work, and it was issued under a new name and by a new company. It was not new in the sense people would understand the word, applied to a book which came in that guise; even a substantial revision does not make a new work.

The fifth clause forbad selling the same work under two names. The order does not cover the sale of the "Standard Encyclopoedia and the "Standard Reference Work" under their several names. Some time ago the Education Society published some sets of the "Reference Work" under the title "National Encyclopoedia" and it was proved that one buyer at least bought both for a public school, not knowing them to be the same. There was no good reason for using two names in selling the same book and the clause is reasonable enough, except for the fact that all copies of the "National Encyclopoedia" have long since been disposed of. The only possible debate is whether such a practice justifies an order when it was so far in the past; a matter which we will deal with later. We will not disturb the clause.

The sixth clause forbad saying that the price, $69.50 or $89 was less than "the usual price." Little need be said about this; it was false and intended to deceive buyers upon a matter of fact. True, it is a very common device in selling, but it is to be discountenanced; morally it is not defensible and the Commission might hold it "unfair."

The seventh clause forbad representing as contributors or editors those who had not contributed to, or edited, the publications. Its propriety depends upon the evidence, and while there is not much of it, it definitely does appear that there was no warrant for claiming at least two, Ballou and Pace, as either contributors or editors. There were, however, a number who had been genuine contributors to "Aiton's Encyclopoedia", but who had done nothing later. How much of this earlier work went into the two later ones cannot be definitely ascertained, but it was the basis of them, and it seems to us not "unfair" to announce as contributors to the derived work those who had been contributors to the original. This clause ought, therefore, to be modified or clarified by excepting from the prohibition contributors to "Aiton's Encyclopoedia."

The eighth and ninth clauses were related; they concerned testimonials used as advertisements. For the eighth, which forbad the

use of such testimonials which had not been given by the person whose name was used, we have been able to find no support in the evidence; and we are referred to none except the conclusions of one, Nixon, which are outweighed by her identification of the handwriting of the person whose name was used. The ninth forbad the use of testimonials, which, though really given, had been garbled so as to be substantially untrue. There was evidence in support of this, and the clause was proper.

The tenth and last clause forbad representing the course of instruction as a "Special Introductory Enrollment", offered at a reduced price. There was no reduced price and so much of the clause was proper; but as to the rest it does not seem to us that the phrase indicated a selected class in the sense that particular qualifications were necessary to join it. The finding in support of this declared as well that agents had represented that the class was to be confined to ten students; and had this been included in the order, it would have been valid pro tanto; but it was not included, and it gives no support to what was.

The respondents argue as to this, and as to several other of the practices condemned, that they were traced only to agents of the companies. So far as the companies themselves are concerned this clearly made no difference; the agents did not act beyond the scope of their authority; the nineteenth finding contained no suggestion that they had been instructed not to make them. Some of them were indeed discharged because of what they said, but that does not prove that they had acted beyond the scope of their authority. The remedy is civil; responsibility may be imputed as in other civil cases. On the other hand the agents were not agents of Stanford and Ward, who are therefore responsible only for what can be traced to them personally. This consideration, however, affects at best only the second, sixth, seventh, ninth, and tenth clauses of the order, for certainly both Stanford and Ward must have directed what was covered by the fourth and fifth. As to the second and sixth, the practice of the agents was so universal that it seems to us that the Commission was justified in assuming that they would not have acted as they did without some direction at least from Ward, the sales manager. We are disposed to say also that, considering the centering of control in two men only, it was permissible to associate Stanford with him. Stanford as amply connected with the practices in the seventh and ninth clauses, for they appear to have been his special concern; we cannot see, however, that Ward was involved. As to the tenth, the evidence of the practice is very meagre and in our judgment scarcely justified a finding that either of these men personally directed the statements about the cost of the course. Therefore, Stanford should not be included in the tenth clause, nor Ward in the seventh, ninth, and tenth.

Finally, the respondents allege that as they had already abandoned some of the practices forbidden before the complaint was served, no order should go against them. We have already mentioned this factor in connection with the fifth clause. It has, how-

ever, often been decided—certainly when the respondent continued to oppose the order on its merits—that this is no defense to an order to cease and desist. Sears Roebuck & Co. v. Federal Trade Commission, 258 Fed. Rep. 307, 310 (C. C. A. 7); Guaranty Veterinary Co. v. Fed. Trade Com., supra, 859, 860 (285 Fed. Rep. 853); Fox Film Corp. v. Fed. Trade Com., 296 Fed. Rep. 353, 357 (C. C. A. 2); Arkansas Wholesale Grocers Assoc. v. Fed. Trade Com., 18 Fed. (2) 866 (C. C. A. 8); Fed. Trade Com. v. Wallace, 75 Fed. (2) 733, 738 (C. C. A. 8); Armand Co. v. Fed. Trade Com. 78 Fed. (2) 707, 708 (C. C. A. 2). In Winston v. Fed. Trade Com., supra, (3 Fed. (2) 901), the respondent had not only abandoned the practices, but stipulated not to resume them.

The order will be modified as follows and otherwise affirmed. It will be reversed in toto as to all the respondents so far as it forbad the practices described in the first, third, and eighth clauses; as to the tenth it will be reversed except as to the representations regarding price. The seventh will be modified so as to exclude from its terms contributors to "Aiton's Encyclopoedia." The order will be also reversed so far as it included Stanford in the tenth clause, and Ward in the seventh, ninth, and tenth; and it will be altogether reversed as to Greener. The answer of the Commission contained in its brief will be stricken. After the order has been amended in accordance with the foregoing, the proceeding will be remitted to the Commission as special master to hear and report whether the respondents have complied with the provisions which are affirmed. The cause will await in this court the return of that report for further proceedings.

Order to cease and desist modified in accordance with the foregoing cause referred as aforesaid.

United States Circuit Court of Appeals for the Second Circuit

Notice of Settlement

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

STANDARD EDUCATION SOCIETY, ET AL., RESPONDENTS

Please take notice that the proposed order, a copy of which is hereto annexed, will be submitted to the Hon. William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, at the Federal Courthouse, Foley Square, City and State of New York, on the 21st day of December at 10:30 a. m., for settlement.

Yours, etc.

HENRY WARD BEER,
*Attorney for Respondents, Office & P. O. Address,*
*29 Broadway, New York City.*

To Hon. WILLIAM T. KELLEY,
*Chief Counsel, Federal Trade Commission,*
*Attorney for Petitioner, Washington, D. C.*

United States Circuit Court of Appeals for the Second Circuit

Index No. 14517

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

STANDARD EDUCATION SOCIETY, ET AL., RESPONDENTS

Before L. HAND, SWAN and CHASE, Circuit Judges

The Federal Trade Commission, petitioner herein having filed with this court on January 20, 1936, its application for the enforcement of an order to cease and desist issued by it against respondents, Standard Education Society, a corporation, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener under date of December 24, 1931, under the provisions of Section 5 of an "Act to Create a Federal Trade Commission, to define its powers and duties and for other purposes" (38 Stat. 719, 15 U. S. C. A., Sec. 45); and said petitioner having also certified and filed herein as required by law a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the testimony taken and the report of said petitioner and said petitioner having also filed its brief in support of its application; and the individual respondents having filed on June 8, 1936, a motion to strike as to them, the complaint herein, and said motion having been denied without prejudice on said date; and the respondents having subsequently filed their joint answer and brief of October 1, 1936; and the Commission having filed its reply brief in the form of an answer (and brief) of October 28, 1936; and the respondents having filed on November 12, 1936, a Notice of Motion and Brief in support thereof to strike from the record the Commission's said answer, and the entire matter having been heard before this court on oral argument on November 12, 1936, and this court having rendered its unanimous opinion thereon December 14, 1936,

Now, therefore, it is hereby ordered, adjudged and decreed that the said Order to Cease and Desist issued by the Federal Trade Commission, petitioner herein, under date of December 24, 1931, be and the same hereby is reversed and vacated as to respondent, A. J. Greener, and it is further

Ordered that the said Order to Cease and Desist be reversed and vacated as to all respondents so far as it forbade the practices described in the first, third, and eighth clauses, and it is further

Ordered that said Order to Cease and Desist be reversed and vacated as to all respondents as to the tenth clause, except as to the representations regarding price, and it is further

Ordered that the said Order to Cease and Desist be modified so as to exclude from the terms of the seventh clause, contributors to "Aiton's Encyclopoedia", and is further

Ordered that said Order to Cease and Desist be reversed and vacated in so far as it includes H. M. Stanford in the tenth clause and W. H. Ward in the seventh, ninth, and tenth clauses, and it is further

Ordered that the said answer of the Commission contained in its reply brief filed October 28, 1936, be stricken from the record, and it is further

Ordered that the said Order to Cease and Desist be otherwise affirmed, and it is hereby further

Ordered that the respondents Standard Education Society, a corporation; Standard Encyclopedia Corporation, H. M. Stanford, and W. H. Ward and each of them, their officers, agents, representatives, and employees in connection with the offering for sale of any books, set of books, or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from;

(1) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

(2) Advertising or representing in any manner that respondents' publication is a recently completed, new, and up-to-date encyclopedia, when such is not the fact.

(3) Selling or offering for sale any set of books of the same text and content material under more than one name or title.

(4) Advertising or representing in any manner that the usual price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or representations, when such is not the fact, and it is further

Ordered that the respondents Standard Education Society, a corporation, Standard Encyclopedia Corporation, H. M. Stanford, and each of them, their officers, agents, representatives, and employees in connection with the offering for sale of any book, set of books, or publications in commerce among the several States of the United States or in the District of Columbia cease and desist from:

(1) Advertising or representing any person as a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor, provided however, that the terms of this clause shall not prohibit the advertisements and representations of persons as contributors to the Standard Reference Work and New Standard Encyclopedia, who contributed to "Aiton's Encyclopedia."

(2) Publishing or causing to be published and circulated testimonials or recommendations of and concerning respondents' publications alleged to have been made by any person, when such testimo-

nials or recommendations have not been made by such person, and it is further

Ordered that the Standard Education Society, a corporation, its officers, agents, representatives, and employees in connection with the offering for sale of any home study course of instruction in commerce among the several States of the United States or in the District of Columbia do cease and desist from:

(1) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers at a specially reduced price, when such is not the fact, and it is hereby

Further ordered that the proceeding be and hereby is remitted to the Federal Trade Commission as Special Master to hear and report to this court whether the respondents have complied with the provisions which are affirmed, and it is hereby further

Ordered that the cause await in this court the return of that report of the Special Master for any further proceedings that may be necessary in the premises.

Dated Dec. 21st, 1936.

WM. PARKIN, *Clerk.*

United States of America, Southern District of New York

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second District, do hereby certify that the foregoing pages, numbered from I to XII and 1 to 505, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Federal Trade Commission, Petitioner, against Standard Education Society, et al., Respondents, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-fourth day of February, in the year of our Lord one thousand nine hundred and thirty-seven, and of the Independence of the said United States the one hundred and sixty-first.

[SEAL]

WM. PARKIN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE: 1937

*Order allowing certiorari*

**Filed April 26, 1937**

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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131027—37——1

# In the Supreme Court of the United States

OCTOBER TERM, 1936

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No.—

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

STANDARD EDUCATION SOCIETY ET AL.

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT**

The Solicitor General, on behalf of the Federal Trade Commission, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit, entered in this cause on December 21, 1936, which modified in certain respects an order of the Federal Trade Commission requiring the respondents to cease and desist from certain alleged unfair methods of competition in interstate commerce.

**OPINION BELOW**

The opinion of the Circuit Court of Appeals (R. 486) has not yet been reported.

## JURISDICTION

The jurisdiction of this Court is invoked under Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), and under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

## QUESTION PRESENTED

Are false representations to prospective purchasers of sets of books that they were to receive the books free and pay only for loose-leaf annual supplements so obviously false that they do not amount to an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act?

## STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, approved September 26, 1914, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45) is printed in the Appendix, *infra*, pp. 15–18.

## STATEMENT

The respondents herein are Standard Education Society, a Minnesota corporation (R. 8); Standard Encyclopedia Corporation, an Illinois corporation (R. 27) and the following individuals: H. M. Stanford, president, director, general manager and a stockholder of Standard Education Society (R. 2, 12, 379, 382, 412, 429); W. H. Ward, vice president, director and a stockholder of Standard Edu-

cation Society (R. 30, 383, 424); and A. J. Greener, comptroller, auditor, director and a stockholder of Standard Education Society (R. 383, 412, 427, 467). The respondents Stanford, Ward and Greener are also the incorporators of Standard Encyclopedia Corporation (R. 424). The respondent corporations are engaged in the compilation and production of encyclopedias and a loose-leaf extension service in connection therewith and the sale thereof in interstate commerce throughout the United States (R. 8, 27). The respondent Standard Education Society is also engaged in the sale of a course of home study and instruction which it offers under the name of Standard Extension University (R. 5, 10, 24, 28, 199–201; 204–210).

On February 25, 1929, the Federal Trade Commission issued a complaint against Standard Education Society and the respondent H. M. Stanford, individually and as president thereof, alleging the use of unfair methods of competition in interstate commerce, in violation of Section 5 of the Federal Trade Commission Act, in connection with the sale of encyclopedias and a correspondence course of home study and instruction (R. 2–7). The said respondents answered (R. 8–11, 12–13) and a hearing was held before an examiner (R. 81–414).

Thereafter, on December 4, 1929, the Commission issued a supplemental complaint naming as respondents, Standard Education Society, Standard Encyclopedia Corporation, a corporation organ-

ized and existing under the laws of the State of Illinois, H. M. Stanford, W. H. Ward and A. J. Greener (R. 20–26). The supplemental complaint alleged that subsequent to the issuance of the original complaint the respondents Stanford, Ward and Greener had organized, under the laws of the State of Illinois, a corporation known as Standard Encyclopedia Corporation, that Standard Education Society had ceased publishing encyclopedias and reference works, and that this business had been taken over by Standard Encyclopedia Corporation which was engaged in compiling and publishing the encyclopedias and works formerly published by Standard Encyclopedia Corporation, and was selling and distributing them in interstate commerce. The supplemental complaint further alleged that Standard Encyclopedia Corporation and the individual respondents individually and as directors of Standard Encyclopedia Corporation were using substantially the same methods of unfair competition alleged in the original complaint to have been used by Standard Education Society.

On January 6, 1930 the respondents, Standard Encyclopedia Corporation, W. H. Ward and A. J. Greener answered the supplemental complaint (R. 27–31). Testimony and other evidence in support of charges in the supplemental complaint and in opposition thereto were presented by the parties before an examiner (R. 415–470). It was stipulated that

in determining the issues raised by the supplemental complaint and the answers thereto the Commission might consider the evidence introduced at the hearing on the original complaint (R. 34–35).

A final hearing was held before the Commission and on December 24, 1931 the Commission made and entered findings of fact and conclusion based thereon (R. 65–77).

The pertinent findings of the Commission may be summarized as follows:

Standard Education Society publishes and sells a work known as the Standard Reference Work and Standard Encyclopedia Corporation publishes and sells a work known as the New Standard Encyclopedia. Both of these works consist of ten volumes which are accompanied, when delivered to purchaser, by a loose-leaf binder. The corporate respondents also publish and sell a so-called extension service which consists of loose-leaf material for inclusion in the binder, this material being represented as designed to keep the encyclopedias up to date. The usual price for either the Standard Reference Work or the New Standard Encyclopedia and the extension service is $69.50. Sometimes sets of works of fiction are included and, in that event, the price is $89.00. (R. 69.) The respondents, through the mails and by their agents, represent to prospective purchasers that each of the prospective purchasers has been specially selected to receive free of cost a set of respondents' books and that the only return desired for the gift

is permission to use the name of the prospective purchaser for advertising purposes and as a reference. At the same time it is represented that the price of $69.50 is paid only for loose-leaf material which will be furnished the purchaser from time to time to keep the publications up to date and that the regular price of the books and loose-leaf service is $150, or sometimes as much as $200. These representations are false and misleading. The encyclopedias are not in fact given away. The price of $69.50 is in fact the regular price of the encyclopedia plus the loose-leaf service. The prospective purchasers have not been specially selected as recipients of a gift and the regular price of the books is not $150 or $200. (R. 69–73.)

Respondents also represent that certain persons have given testimonials in favor of Standard Reference Work and New Standard Encyclopedia when such is not the fact (R. 73–74). The respondents also include in their prospectus and in their publications a list of contributors which includes the names of persons who have not made contributions to the Standard Reference Work or the New Standard Encyclopedia (R. 74–75).

The respondents also sell a correspondence course of Home Study and Instruction, this branch of their business being carried on under the name of Standard Extension University. Respondents represent to prospective purchasers of this course of instruction that it is offered to them as a "special introductory enrollment" course and at a

price less than the usual price charged to the public generally. These representations are false, misleading and deceptive because the course is not offered to a certain number of persons at a special price, but is sold to everyone at the same price. (R. 75.)

The Commission also found that Standard Encyclopedia Corporation was organized by the individual respondents for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent Standard Education Society and that the individual respondents have used and are using the corporate respondents to carry on business in the manner described in the findings (R. 76).

On the basis of its findings and conclusions, the Commission issued a cease and desist order (R. 78–80), which directed the respondents and each of them to cease and desist from:

> (1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact.
>
> (2) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact.

(3) Advertising or representing in any manner that purchasers or prospective purchasers of respondents' publications are only buying or paying for loose-leaf supplements intended to keep the set of books up-to-date for a period of ten years, when such is not the fact.

(4) Advertising or representing in any manner that respondents' publication is a recently completed, new, and up-to-date encyclopedia, when such is not the fact.

(5) Selling or offering for sale any set of books of the same text and content material under more than one name or title.

(6) Advertising or representing in any manner that the usual price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or representations, when such is not the fact.

(7) Advertising or representing any person as a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

(8) Advertising or representing that any person has given testimonials or recommendations for and concerning respondent's publications, when such is not the fact.

(9) Publishing or causing to be published and circulated testimonials or recommenda-

tions of and concerning respondents' publications alleged to have been made by any person when such testimonials or recommendations have not been made by such person.

The tenth clause of the order directed the respondents Standard Education Society, H. M. Stanford, W. H. Ward, and A. J. Greener, in connection with the offering for sale of any home study course, to cease and desist from:

> (1) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers as a "Special Introductory Enrollment", and at a specially reduced price, when such is not the fact.

On January 20, 1936 the Federal Trade Commission filed in the Circuit Court of Appeals for the Second Circuit, pursuant to the provisions of Section 5 of the Federal Trade Commission Act, an application for the enforcement of the cease and desist order (R. II). The respondents filed an answer denying violation of the cease and desist order, and praying that the application for its enforcement be dismissed and that the order be vacated and set aside. The cause came on for argument on November 12, 1936, and on December 14, 1936 the Circuit Court of Appeals rendered an opinion holding that the cease and desist order should be modified in certain respects and otherwise affirmed, and that after the order had been

amended in accordance with the court's opinion it should be remitted to the Commission as Special Master to hear and report whether respondents had complied with the provisions of the order which were affirmed (R. 486). An order in accordance with this opinion was entered by the Circuit Court of Appeals on December 21, 1936 (R. 493).

The order of the Circuit Court of Appeals modified the cease and desist order of the Commission in the following respects:

1. By striking from the order the first, third and eighth clauses set forth on pages 7, 8, *supra.*

2. By striking all of the tenth clause, set forth on page 9, *supra,* except those provisions which relate to representations regarding the price of the course of instruction.

3. By modifying the provisions of the seventh clause, set forth on page 8, *supra,* so as to exclude from its terms contributors to "Aiton's Encyclopedia."[1]

4. By reversing the order so far as it included the respondent Stanford in the tenth clause, respondent Ward in the seventh, ninth and tenth clauses, and altogether so far as it related to respondent Greener.

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[1] Aiton's Encyclopedia was the predecessor of the encyclopedias which respondents now produce and sell. It was first published in 1910 (R. 379–380). The Commission found that Aiton's Encyclopedia was different in form, in material and in purpose from the present encyclopedias sold by respondents (R. 73) and this finding was fully supported by the record (R. 388–404).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that respondents' false and misleading representations that the sets of books offered for sale by them were given free of cost and that the purchasers paid only for loose-leaf supplements intended to keep the books up-to-date did not constitute an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act.

2. In striking from the cease and desist order the provisions prohibiting respondents from advertising or representing that any person had given testimonials or recommendations for their publications when such was not the fact.

3. In modifying the cease and desist order so as to exclude from the provisions of the seventh clause of the said order persons who had contributed to Aiton's Encyclopedia.

4. In striking from the tenth clause of the cease and desist order all representations except those regarding price.

5. In holding that the cease and desist order should be altogether reversed as to the respondent Greener, reversed to the extent that it included Stanford in the tenth clause, and reversed to the extent that it included respondent Ward in the seventh, ninth and tenth clauses.

6. In failing to hold that when a petition for enforcement of a cease and desist order is brought, pursuant to the provisions of Section 5 of the Fed-

eral Trade Commission Act, the court should determine the issue of compliance before reviewing the validity of the cease and desist order.

7. In failing to hold that by praying in their answer that the order to cease and desist be vacated the respondents waived their right to insist that noncompliance with the order be proved as a condition precedent to the granting of the application of the Federal Trade Commission for enforcement of the cease and desist order.

8. In remitting the proceeding to the Commission as Special Master to hear and report as to whether respondents had complied with the provisions of the cease and desist order which were affirmed.

9. In failing to enter a decree affirming the cease and desist order and commanding the respondents and each of them to comply therewith.

10. In modifying the cease and desist order of the Federal Trade Commission.

## ARGUMENT

1. The court below has decided that respondents' false representations that they were giving away sets of books free of cost and charging only for the loose-leaf supplements intended to keep the books up to date did not constitute an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act because no one would "be fatuous enough to be misled" by such misrepresentations. This principle is in direct conflict with the decision of the Circuit Court of Ap-

peals for the Seventh Circuit in *Consolidated Book Publishers, Inc.* v. *Federal Trade Commission,* 53 F. (2d) 942, certiorari denied, 286 U. S. 553, in which, under similar facts, a cease and desist order almost identical with the one here in question was affirmed. The court below recognized the existence of the conflict (R. 489), but stated that it preferred to follow *John C. Winston Co.* v. *Federal Trade Commission,* 3 F. (2d) 961 (C. C. A. 3d), which is in accord with the instant case.[2]

2. The court below did not purport to find that in fact no one had been misled by the false statements with respect to the gift of the set of books, and, indeed, could not have so found in view of the proof in this case that many persons had in fact been deceived (R. 82–84, 86–88, 90–92, 94–95, 104–105, 110–115, 119, 122–123, 125–127, 153, 284–285, 287, 288–289, 311–312, 315–317, 320, 338–340, 343, 365, 370, 407). The facts thus being clear, the decision below appears to rest upon the broad legal principle that if misrepresentations are so obviously false that the court believes a man would be fatuous to believe them, they do not amount to an unfair method of competition within the meaning of Section 5. Stated otherwise, the rule applied by

[2] The court below suggested that the *Consolidated Book Publishers* case might be distinguished on the ground that "the case was complicated by a number of graver practices which probably colored the whole." (R. 489.) Even if that distinction be of legal force, it is inapplicable, for similar "graver practices" are present in the case at bar (R. 122–123, 153, 288–289, 311–312, 315–317, 365, 370, 407).

the court below appears to be that false representations do not constitute unfair competition unless in the court's judgment they are of a character likely to deceive a man of ordinary prudence. If this rule be accepted, it will unduly restrict the scope of Section 5, and the jurisdiction of the Commission thereunder. The principle has never been approved by this Court, and its assertion by the lower court raises a legal question of general application and great legal importance which should be determined by this Court.

3. The Commission now has pending nine proceedings relating to unfair competitive practices in the sale of books and publications in interstate commerce which are substantially similar to the practices in the case at bar. In view of the direct conflict noted, *supra,* pp. 12–13, the Commission is uncertain as to the proper rule to be applied in these proceedings. This uncertainty can be removed only by a decision of this Court.

4. The decision of the court below is also incorrect in several other respects, as to which error has already been specified, pages 11–12, *supra,* but as to which it does not seem necessary to make a full argument now.

## CONCLUSION

Wherefore, it is respectfully submitted that this petition should be granted.

STANLEY REED,
*Solicitor General.*

MARCH, 1937.

# APPENDIX

Section 5 of the Federal Trade Commission Act (Act of September 26, 1914, c. 311, 38 Stat. 717, 719, U. S. C., Title 15, Sec. 45) is as follows:

That unfair methods of competition in commerce are hereby declared unlawful.

*Power to prohibit.*—The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

*Procedure by commission.*—Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person,

partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

*Enforcement of orders.*—If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript

the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

*Application to set aside order.*—Any party required by such order of the commission to cease and desist from using such

method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

*Jurisdiction of court.*—The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

* * * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1937

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# In the Supreme Court of the United States

OCTOBER TERM, 1937

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No. 14

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

STANDARD EDUCATION SOCIETY *ET AL.*

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*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE PETITIONER

### OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 486–492) is reported in 86 F. (2d) 692.

### JURISDICTION

The jurisdiction of this Court is invoked under Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), and under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

### QUESTIONS PRESENTED

1. Are false representations to prospective purchasers of a ten-volume reference work and a loose-

leaf extension service, that the reference work is free and that only the extension service is to be paid for, an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act?[1]

2. Should the individual respondents Stanford, Ward, and Greener be bound individually by each of the paragraphs of the Commission's order?

3. Should the seventh paragraph of the Commission's order have been modified so as to permit respondents to make false representations that contributors to Aiton's Encyclopedia whose contributions were *not* taken over into the current Standard Encyclopedia were contributors to the latter?

4. Was the eighth paragraph of the Commission's order, prohibiting respondents from advertising that any person had given testimonials or recommendations for respondents' publication when such is not the fact, supported by evidence?

## STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, approved September 26, 1914, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), is printed in the Appendix, *infra*, pages 84 to 87.

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[1] This question was the basis for the petition for certiorari. Questions 2 to 4 were raised and saved by the assignment of errors.

STATEMENT

The respondents herein are Standard Education Society, a Minnesota corporation (R. 8); Standard Encyclopedia Corporation, an Illinois corporation (R. 27); and the following individuals: H. M. Stanford, president, director, and general manager of Standard Education Society (R. 12, 379, 412); W. H. Ward, vice-president, secretary, sales manager, and director of Standard Education Society (R. 30, 383, 424); and A. J. Greener, comptroller and auditor and generally in charge of financial activities of Standard Education Society (R. 467). Stanford, Ward, and Greener were the sole stockholders in the Standard Education Society, Stanford and Ward each owning 250½ shares and Greener 35 shares (R. 426–427). Stanford, Ward, and Greener are also the sole incorporators and original directors [2] of Standard Encyclopedia Corporation (R. 30, 32, 423–424, 427). The respondent corporations are engaged in the compilation and publication of encyclopedias and a loose-leaf extension service in connection therewith and the sale thereof in interstate commerce throughout the United States (R. 8, 27). The respondent Standard Education Society is also engaged in the sale of a course of home study and instruction which it offers under the name of Standard Extension University (R. 5, 10, 199–201, 204–210, 463, 546).

[2] Greener was a director of the Standard Encyclopedia Corporation when it was formed, but he resigned shortly thereafter (R. 427).

On February 25, 1929, the Federal Trade Commission issued a complaint against Standard Education Society and the respondent H. M. Stanford, individually and as president thereof, alleging the use of unfair methods of competition in interstate commerce, in violation of Section 5 of the Federal Trade Commission Act, in connection with the sale of encyclopedias and a correspondence course of home study and instruction (R. 2–7). The said respondents answered (R. 8–11, 12–13) and hearings were held before an examiner (R. 81–414).

Thereafter, on December 4, 1929, the Commission issued a supplemental complaint, naming as respondents Standard Education Society, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward, and A. J. Greener (R. 20–26). The supplemental complaint alleged that subsequent to the issuance of the original complaint the respondents Stanford, Ward, and Greener had organized, under the laws of the State of Illinois, a corporation known as Standard Encyclopedia Corporation, that Standard Education Society had ceased publishing encyclopedias and reference works and that this business had been taken over by Standard Encyclopedia Corporation, which was engaged in compiling and publishing the encyclopedias and works formerly published by Standard Education Society and was selling and distributing them in interstate commerce. The supplemental complaint further alleged that Standard Encyclopedia Corporation and the individual respondents, individ-

ually and as directors of Standard Encyclopedia Corporation, were using substantially the same methods of unfair competition alleged in the original complaint to have been used by Standard Education Society.

On January 6, 1930, the respondents, Standard Encyclopedia Corporation, W. H. Ward, and A. J. Greener, answered the supplemental complaint (R. 27–31). On January 23, 1930, an amended answer was filed by Greener (R. 32–33). Testimony and other evidence in support of charges in the supplemental complaint and in opposition thereto was presented by the parties before an examiner (R. 416–470). It was stipulated that in determining the issues raised by the supplemental complaint and the answers thereto the Commission might consider the evidence introduced at the hearing on the original complaint (R. 34–35).

A final hearing was held before the Commission, and on December 24, 1931, the Commission made and entered findings of fact and its conclusion based thereon (R. 65–77).

The facts disclosed by the record and found by the Commission may be summarized as follows: "In 1900 there was incorporated under the name Welles Bros. Publishing Company a corporation which published and distributed a work under the name and style of Aiton's Encyclopedia. About the year 1912 the name of the work was changed to Standard Reference Work. In the year 1917 the name of the corporation, Welles Bros. Pub-

lishing Company, was changed to Standard Education Society, and under this latter name and style continued to publish, sell, and distribute in interstate commerce the books styled Standard Reference Work" (Fdg. 6, R. 67).

The officers, directors, and shareholders of the Standard Education Society and the persons in complete charge of all its operations were Stanford, Ward, and Greener (see page 3, *supra*; page 64, *infra*). In August 1929 (while the hearings before the Commission were being held), Stanford, Ward, and Greener caused a new corporation, the Standard Encyclopedia Corporation, to be organized, and since that time the publication distributed by respondents has been named the New Standard Encyclopedia and the work has been distributed by and in the name of the new corporation [3] (R. 67–68, 398, 404–406).

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[3] The Standard Education Society continued to "handle * * * everything of a financial character," but did not print any more books (R. 405). Eventually the two companies were to be merged (R. 406). Paragraph 20 of the Commission's findings (R. 76) reads in part as follows:

> Respondent Standard Encyclopedia Corporation was organized by the individual respondents herein in August 1929, approximately six months after the issuance of the original complaint herein by the Federal Trade Commission. The Commission concludes and infers from the record in this case and so finds that this corporation was organized by the individual respondents for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent Standard Education Society.

From 1912 to 1929 the publication sold by the Standard Education Society was known as the Standard Reference Work (Fdg. 6, R. 67–68, 387, 392). It was revised and generally expanded every two or three years, a thorough revision being made in 1923 (R. 387–388). In 1929 when the new corporation was formed and the name of the publication changed to New Standard Encyclopedia, the last previous edition was revised and two volumes of special teachers' material eliminated (R. 404–405). Both of these works consist of ten volumes, which are accompanied, when delivered to purchasers, by a loose-leaf binder (Fdg. 10, R. 69, 405). The corporate respondents also publish and sell a so-called extension service which consists of loose-leaf material for inclusion in the binder (R. 8, Fdg. 10, R. 69), this material being represented as designed to keep the encyclopedia up to date. The usual price for either the Standard Reference Work or the New Standard Encyclopedia and the extension service for ten years is and has been $69.50 (Fdg. 10, R. 69, 384). Sometimes sets of works of fiction are included, and in that event the price is $89.00 (Fdg. 10, R. 69, 385).

The respondent corporations are engaged in interstate commerce; the books they publish are sold by salesmen to persons throughout the country; and the books are shipped in interstate commerce to the purchasers after the contracts of sale have been made (Fdgs. 9–11, R. 68–69, 8, 27, 384). The

respondents compete in interstate commerce with other persons and firms selling similar sets of encyclopedias or reference works in interstate commerce (Fdg. 9, R. 68).[4] There was testimony that at least one of such competitors does not engage in any of the unfair practices engaged in by respondents (Fdg. 9, R. 68, 163–165). The practices are described immediately below.

The customary method by which respondents sell their publications is by false representations to a prospective customer that he has been specially selected to receive free of charge a set of the ten-volume reference work or encyclopedia (Fdgs. 12–13, R. 69–72). The prospective purchaser is told that he is one of a few individuals in his locality selected to receive the books free, and that the company regards the cost of the gift as a legitimate advertising expense to be compensated by the use of the customer as a reference and in some cases by a written recommendation from him (*Ibid;* R. 89, 91, 104, 111, 122, 125, 133, 135, 141, 143, 145, 153, 159, 168, 174, 176, 179, 183, 184, 188–189, 193, 194, 227–228, 233, 255, 256, 268–269, 274, 280, 287, 291, 292, 295, 297, 299–301, 307–309, 311–312, 318–319, 324, 327, 331, 349, 352, 355, 356, 365, 171–175; Ex. 10, 14, 17, 24, 27, 35, 40, 43, 48, 80).[5] In many instances these representations are first

[4] See page 61, *infra.*

[5] Unless otherwise noted, all exhibits referred to are "Commission's exhibits."

made by letters sent from the office of respondents* (Exs. 10, 14, 17, 24, 27, 35, 40, 43, 48, 117) and then by selling agents who make the same representations. In other cases the first approach to the customer is made by the agent (R. 82, 89, 91, 100, 104, 111, 116, 119, 122, 176, 281, 299, 324).

The agent subsequently informs the prospective purchaser that the encyclopedia is kept up to date and its value greatly enhanced by the loose-leaf extension service (*cf.* Resp. Ex. 6), and that if the customer subscribes to the service, he will be given the encyclopedia free of charge (R. 168, 193, 195–196, 259, 307, 376). By direct statement (Ex.

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*Most of these letters were sent on the letterhead of Charles A. Knapp and signed by Knapp as "Publicity Manager" (*e. g.* Ex. 10). Respondents attempted to show that Knapp was not their agent or employee but an independent contractor, and that they were not responsible for his activity (R. 48, 429–430, 435–436). Inasmuch as there is a great deal of other evidence to support the Commission's findings as to the misrepresentations made in Knapp's letters, Knapp's status is not of vital importance at this stage of the case (see letter at R. 271 and Ex. 80 for similar representations made by persons acknowledged to be in respondents' main office).

The following facts demonstrate, however, that, whether or not Knapp was an employee of respondents, they permitted him to represent himself as such to the public and were jointly responsible with him for any misrepresentations made by him or his agents in selling their encyclopedia: (1) until the week before the final hearing his offices adjoined those of respondents (R. 435); (2) his letters were signed "Publicity Manager" (Ex. 10); (3) letters sent by *his* employees were sent on the letterhead of the Standard Education Society and signed "Manager, Publicity

35, 48) or necessary inference, the customer is intentionally led to believe that he is paying only the usual price for the extension service alone (R. 353, see pages 30 and 40, *infra*)—the "price" being either $69.50 or $89.00, depending upon whether the agent offers to "give" the customer a free set of fiction in addition to the encyclopedia (Fdg. 13, R. 71). Representations are often made that the regular price for the encyclopedia is much greater than $69.50 or $89.00; the price named varies with the agent, but it is often represented to be as high as $150.00 and sometimes as high as $200.00 (Fdg. 13, R. 71–72, 285, 291, 189, 202).

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Department" (R. 438; Ex. 21); (4) the salesmen following up his letters claimed to represent the Standard Education Society (R. 149–150, 188, 212); (5) the Standard Education Society, after inquiry by a purchaser, acknowledged that one of these salesmen was "our representative" (Ex. 15); (6) the contracts signed by purchasers from such agents were made with the Standard Education Society (Exs. 11, 18, 36, 41); (7) checks were made payable to the Standard Education Society (R. 212); (8) the Standard Education Society acknowledged receipt of orders taken by such agents from persons who were first solicited through Knapp's letters (Exs. 19, 28); (9) in acknowledging letters addressed to the Standard Education Society, Knapp and his agents referred to the Society as "this office" and "the company" (Exs. 16, 21; R. 438); (10) the misrepresentations by Knapp and his agents were identical with those of respondents' other agents; (11) the attempts to collect from so-called Knapp customers, deceived by his misrepresentations, were made by the Standard Education Society (Exs. 20, 22, 30, 32, 45); (12) lawsuits against such customers were threatened by attorneys representing the Standard Education Society (Ex. 33).

Many persons are induced to purchase the extension service because of the representations that they are paying only for the service at its regular price, and that the ten-volume reference work, which usually costs a great deal, is being given to them free of charge (Fdg. 19, R. 76; see page 30, *infra*).

All of these representations are false and misleading (Fdg. 12, 13, R. 70, 72). The representations outlined above are made to all prospective customers; there is no list of selected customers who receive the books free (*Id.*). The regular price of the encyclopedia plus the loose-leaf extension service is $69.50; anyone writing to the respondent and asking for the price of both together will be told that he can obtain both at $69.50 (Fdg. 10, R. 69; Ex. 86, 108; R. 384).

The respondents made other false representations in selling their publications. In their advertising matter and on the back of the forms of contract were testimonials from numerous persons (Fdg. 14, R. 72; Ex. 11; Resp. Ex. 6). In addition, salesmen often stated orally that the work was approved or recommended by persons known to the purchaser (R. 133, 188, 198, 269, 277, 372–373; Ex. 44). Some of the testimonials and recommendations were completely unauthorized; others had been made with respect to Aiton's Encyclopedia, "which was a work quite different in form, in material, and in purpose from the Stand-

ard Reference Work" and the Standard Encyclopedia; and others were garbled and distorted versions of what the person named had really said (Fdg. 14–15, R. 72–74, see page 79, *infra*).

The prospectus which respondents' agents showed to customers and the fly leaves of the encyclopedias contained a list headed "Contributors and Reviewers" (Fdg. 17, R. 75; Ex. 83, 141). The Commission found that some of the persons thus named, notably Monsignor Edward A. Pace, Vice Rector and General Secretary of Catholic University, Washington, D. C., and Dr. Frank W. Ballou, Superintendent of Schools in the District of Columbia, neither contributed articles nor reviewed articles for publication in respondents' works (Fdg. 17, R. 75, 359, 363).[7] Others had contributed articles to Aiton's Encyclopedia but not to the Standard Reference Work or the Standard Encyclopedia (R. 261–266).

The respondents advertised that the New Standard Encyclopedia was a completely new and up-to-date reference work, that it was "something new under the sun" (Fdg. 15, R. 73; Resp. Ex. 6).

[7] The Commission heard evidence from only a small number of the many persons whose names were used on the list. This does not justify the inference that the other names were all used legitimately; the Commission is required to have before it *some* evidence that respondents are engaged in unfair methods of competition before issuing a cease and desist order. Once that evidence has been introduced, cumulative evidence to the same effect is unnecessary to support the Commission's finding and there is no reason why the Commission need incur additional expense in procuring such evidence.

This caused persons to believe that the work was a new publication, whereas the fact was that the New Standard Encyclopedia was nothing more than the old Standard Reference Work slightly revised (R. 405) and published under a new name.

Respondents had also published their reference work under the name of "National Encyclopedia" without disclosing that it was identical with the Standard Reference Work (Fdg. 16, R. 74). This caused some purchasers to buy the so-called National Encyclopedia in the belief that it was a separate and distinct publication [8] (*Id.*).

Respondents also operated in interstate commerce a correspondence school under the name of Standard Extension University. The "University" was started in 1924. The regular price for its course was $98 in 1924, $120 in 1925, and $135 in 1927. Prospective purchasers were informed, however, that they were receiving special introductory offers and that the regular price was $250. False representations were also made that the special price would not be continued after the agent had secured ten student purchasers (Fdg. 18, R. 75, 205, 200, 463).

The above misrepresentations deceived prospective purchasers who believed them and relied upon them in purchasing respondents' encyclopedias (Fdg. 19, R. 76). Respondents were thus enabled to sell their products in interstate com-

[8] This practice was discontinued (R. 392).

merce to persons who would not otherwise have bought them. The increase in respondents' sales diverted trade from respondents' competitors, particularly those not using such false and misleading sales methods (*Id.*).

On the basis of its findings and conclusions the Commission issued a cease and desist order, which directed the respondents to cease and desist from making each of the above-mentioned misrepresentations (R. 78–80).[9]

On January 20, 1936, the Federal Trade Commission filed in the Circuit Court of Appeals for the Second Circuit, pursuant to the provisions of Section 5 of the Federal Trade Commission Act, an application for the enforcement of the cease and desist order (R. II–XI). The respondents filed an answer denying violation of the cease and desist order and praying that the application for its enforcement be dismissed and that the order be vacated and set aside (R. XIII). The cause came on for argument on November 12, 1936, and on December 14, 1936, the Circuit Court of Appeals rendered an opinion holding that certain provisions of the cease and desist order should be reversed, others modified, and others affirmed, and that after the order had been amended in accordance with the court's opinion it should be remitted to the Commission as Special Master to hear and report

[9] For purposes of convenience, the provisions of this order are set forth hereinafter, pages 15 to 17, in connection with the modifications made by the Circuit Court of Appeals.

whether respondents had complied with the provisions of the order which were affirmed (R. 486–492). An order in accordance with this opinion was entered by the Circuit Court of Appeals on December 21, 1936 (R. 493–495).

The first nine paragraphs of the order entered by the Commission applied to all five respondents—the two corporations and Stanford, Ward, and Greener. The tenth paragraph applied to all except the Standard Encyclopedia Corporation. The ten paragraphs of the Commission's order and the disposition made of each by the Circuit Court of Appeals are set out below. The Commission ordered the respondents to cease and desist from the following practices (R. 78–80):

> (1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact. [Reversed.]
>
> (2) Advertising or representing in any manner that a certain number of sets or any set of books offered for sale or sold by them has been reserved to be given away free of cost to selected persons as a means of advertising, or for any other purpose, when such is not the fact. [Affirmed except as to Greener.]
>
> (3) Advertising or representing in any manner that purchasers or prospective purchasers of respondents' publications are only

buying or paying for loose-leaf supplements intended to keep the set of books up-to-date for a period of ten years, when such is not the fact. [Reversed.]

(4) Advertising or representing in any manner that respondents' publication is a recently completed, new, and up-to-date encyclopedia, when such is not the fact. [Affirmed except as to Greener.]

(5) Selling or offering for sale any set of books of the same text and content material under more than one name or title. [Affirmed except as to Greener.]

(6) Advertising or representing in any manner that the usual price at which respondents' publications are sold is higher than the price at which they are offered in such advertisements or representations, when such is not the fact. [Affirmed except as to Greener.]

(7) Advertising or representing any person as a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor. [Modified so as to exclude from its terms contributors to Aiton's Encyclopedia, and so as to exclude Ward and Greener.]

(8) Advertising or representing that any person has given testimonials or recommen-

dations for and concerning respondents' publications, when such is not the fact. [Reversed.]

(9) Publishing or causing to be published and circulated testimonials or recommendations of and concerning respondents' publications alleged to have been made by any person when such testimonials or recommendations have not been made by such person. [Affirmed except as to Ward and Greener.]

(10) Advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers as a "Special Introductory Enrollment", and at a specially reduced price, when such is not the fact. [Affirmed only as to the representations regarding price, and modified so as to exclude Stanford, Ward and Greener.]

Error has been assigned as to each of the changes made in the Commission's order by the Circuit Court of Appeals. We do not intend to discuss the errors assigned as to the tenth paragraph of the order. To the extent that the Commission's order was affirmed by the court below, it is, of course, not now before this Court. *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 66; *Alexander* v. *Cosden Co.*, 290 U. S. 484, 487; *Lloyd Sabaudo Societa* v. *Elting*, 287 U. S. 329, 331.

SUMMARY OF ARGUMENT

I. Respondents' representations that their encyclopedias were being given away free to prospective purchasers who bought the extension service were false and unfair. The record demonstrates that customers were deceived by these representations and induced to buy the extension service in the belief that they were receiving the encyclopedia free of charge, when in fact they were paying the regular price for the encyclopedia and the extension service. The use of such false and fraudulent misrepresentations in competition is unlawful under the Federal Trade Commission Act. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67. If the decision below is meant to be placed on the ground that these representations were not deceptive or misleading, it completely disregards the finding of the Commission, supported by ample evidence, to the contrary.

The fact that the purchaser knew what he was getting and the price he was paying did not render the misrepresentation any the less fraudulent or harmful, because no purchase would have been made at all except for the false statement. Nor can the respondents' practices be regarded as the ordinary legitimate type of free offer. When such an offer is made, the purchaser understands that he is paying only the usual price for one article in

order to obtain that article and another which is given away. If the seller in fact charges the regular price for both articles together, his representation that one is being given away free is false and intended to deceive. In the case at bar respondents attempted to make purchasers believe that the free offer was of the legitimate type when such was not the case.

The decision below cannot be supported on the ground that misrepresentations are not unfair if they are so grossly false that persons of ordinary prudence ought not to believe them. The law protects the naive against fraud as well as the cunning. It does not require a prospective purchaser to assume that "all men are knaves and liars." *Bailey* v. *Smith,* 23 F. (2d) 977, 979 (Ct. App. D. C.). Moreover, the persons shown to be deceived by respondents' misstatements were not excessively gullible; they were persons of more than average intelligence. They were merely not experienced in the sharp practices of the sort here employed.

Nor can respondents' false statements be regarded as mere trade puffing. They were not statements of opinion relating to value or quality, but direct misrepresentations of fact. Such misstatements, even when they relate to matters of price, are fraudulent and unfair.

*John C. Winston Co.* v. *Federal Trade Commission,* 3 F. (2d) 961 (C. C. A. 3rd), certiorari denied, 269 U. S. 555, relied upon by respondents, is not authority for the decision below, as the practice

there sustained by the Circuit Court of Appeals did not involve any misstatements of fact that the books were being given away free. In *Consolidated Book Publishers, Inc.* v. *Federal Trade Commission*, 53 F. (2d) 942 (C. C. A. 7th), certiorari denied, 286 U. S. 553, the Circuit Court of Appeals affirmed an order of the Commission prohibiting practices identical with those in question here, and that decision is in direct conflict with the decision below.

II. The practices of respondents constitute methods of competition in interstate commerce. The record shows that the respondents competed with other publishers in selling their work in interstate commerce and that persons were induced to buy by respondents' false statements.

III. The individual respondents Stanford, Ward, and Greener were properly included in the Commission's order. Together they filled all the offices and were the sole directors and stockholders of the respondent corporations. Stanford and Ward were shown by the record to be personally responsible for all of the unfair practices carried on in the name of the respondent corporations. Stanford, Ward, and Greener were the incorporators of a new company, organized after the commencement of the proceeding before the Commission, which the Commission found to have been formed for the purpose of evading its jurisdiction.

IV. The seventh paragraph of the Commission's order should not have been modified so as to ex-

clude contributors to Aiton's Encyclopedia. That paragraph prohibited respondents from advertising as contributors to its publications persons who had not in fact made contributions. Aiton's Encyclopedia, a predecessor to respondents' work, was discontinued in 1912. The Commission's order permitted respondents to list as contributors persons whose work had been carried over from Aiton's to the Standard Reference Work. The court order permitted respondents, in addition, to include the names of persons whose work had been completely eliminated from the new Reference Work. Representations that such persons were contributors to the Reference Work are false, misleading, and unfair.

V. There was evidence to support the eighth paragraph of the Commission's order, which directed respondents to cease and desist from representing that any person had given testimonials in behalf of respondents' publications when such was not the fact. The court below was not authorized to weigh the evidence and come to a conclusion different from that reached by the Commission.

## ARGUMENT

### INTRODUCTION

This Court has recognized that the power of the Federal Trade Commission to order the discontinuance of methods of competition depends upon three prerequisites:

(1) Are the methods used unfair?

(2) Are they methods of competition in interstate commerce, and

(3) Is a proceeding by the Commission to prevent the use of the methods in the interest of the public?

*Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 216; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 646–647.

The court below decided the second and third of these questions in favor of the Commission; it is the court's disposition of the first question which raises the issues here presented.[10] The court below held that a number of the false representations made by respondents to induce the purchase of their books were unfair within the meaning of Section 5 of the Federal Trade Commission Act. At the same time the court selected from the group

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[10] In the court below respondents challenged the finding of the Commission that their acts were methods of competition in interstate commerce. The court rejected this contention (R. 488–489). We anticipate that respondents will raise the same point here. This question is discussed in Point II, *infra*, pages 61 to 63.

The court below did not hold that the proceeding by the Commission was not in the public interest. This was correct; if respondents' method of selling by false representations is unfair, the action of the Commission in prohibiting it is in the interest of the public. *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212.

of false representations which constituted respondents' fraudulent selling scheme the particular misrepresentation that the books were given away free and the purchaser paid only the regular price for the loose-leaf extension service; and, despite the fact that this particular falsehood was just as false and misleading as the others, held that it was not unfair within the meaning of the statute (R. 489). The petitioner's first contention is that in this respect the decision of the court below is erroneous.

## I

### Respondents' False Representations That the Sets of Books Offered for Sale Were Given Away Free Constitute an Unfair Method of Competition Within the Meaning of Section 5 of the Federal Trade Commission Act

That false representations constitute an *unfair* method of competition has been established by prior decisions of this Court. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67. Accordingly, it would seem sufficient, in order to demonstrate the unfairness of the methods of competition employed by respondents, to show that they are based on the use of deliberate falsehoods.

The testimony of seventy-five witnesses from Pennsylvania, New York, Ohio, Indiana, Illinois, Minnesota, Missouri, Nebraska, California, and Oregon [11] shows that the same misstatements were made by respondents' agents in all parts of the country. Both by means of written communications from the central office in Chicago and through the oral statements of salesmen, it was respondents' practice to represent that their reference work or encyclopedia was to be given away free of charge. (Fdgs. 12–13, R. 69–72, 82, 86, 88, 104, 108, 111–113, 116, 119–121, 125–126, 130, 135, 153, 168, 174, 179–181, 184, 188–189, 195, 227, 233, 255–256, 268–269, 271, 273–274, 278–279, 280, 281–282, 287, 291–293, 303, 307–309, 318, 329, 331, 343, 349, 355, 365, 371, 372; Exs. 10, 35, 48, 80, 87, 103, 104, 117.)

[11] Respondents attempt to disavow responsibility for the activities of their California sales office on the ground that the managers of that office were not their agents (R. 48). That office used the same method of selling as respondents' other agents (R. 283–358; Ex. 117), used the letterhead of the Standard Education Society, "Home Office, Chicago, Illinois," and signed letters as "Standard Education Society" (Exs. 84, 86, 87, 88, 90, 91, 92, 93). The agents claimed to represent the Standard Education Society of Chicago, representing that the California office was a branch office of the Chicago company (R. 314, 318, 319, 327, 331, 352, 355, 284, 287, 288, 291, 295, 297, 299, 303, 306, 311, 317, 324). The certificate of subscription to the loose-leaf extension service was signed "Standard Education Society, by H. M. Stanford, President" (Ex. 98), and the contracts were made with the Standard Education Society of Chicago (R. 295–296). Some of the correspondence with California purchasers, including attempts to collect from them, was conducted directly from the Chicago office (R. 288–289, 306; Exs. 100, 101).

Some prospective purchasers were subsequently informed that the gift was conditional upon a subscription to the extension service (R. 168, 193, 195, 259, 274, 307, 376); others were induced to pay for the latter by the representation that the service was necessary to keep the reference work up to date (R. 105, 111–112, 189).[12]

Thus the customer was intentionally led to believe that he could obtain both the ten-volume reference work and the extension service for the regular price of the service alone (Ex. 104; R. 353, 189). Some salesmen also offered to give free of charge sets of fiction by well-known authors to subscribers to the extension service (Fdg. 13, R. 71, 130, 307, 327, 334, 340; Ex. 87). These salesmen would represent that the price of the extension service alone was $89.00 (*Id.*). If sets of fiction were not offered, the price of the extension service was said to be $69.50[13] (Fdg. 13, R. 71–72; Ex. 106). As a matter of fact, the respondent Stanford, president of the Standard Education Society, admitted on the witness stand that $69.50 was the regular price for both the complete set of books and the extension service, and that $89.00 was the

[12] In a number of instances the customer was induced to sign her name to a contract in the belief that she was merely giving the address to which the books were to be sent and that she was to pay nothing at all, except express charges (R. 108–109, 122–123, 153–154).

[13] Needless to say, the same customers were not informed that the "regular price" of the service varied with the quantity of books to be given "free of charge."

regular price for the whole if sets of fiction were included [14] (R. 384–385).

Respondents made the above representations plausible by falsely stating that the special offer of a free set of books was made only to a few specially selected persons in the locality for purposes of advertising (Fdgs. 13–14, R. 69–71; see page 8, *supra*); that it was hoped that such persons would recommend respondents' work to others in the vicinity (R. 94, 125, 133, 135, 141, 145, 159, 168, 179, 188–189, 228, 233, 268, 274, 281–282, 295, 297, 299–301, 318, 324, 327, 349, 352; Exs. 7, 10); and that the respondents would then attempt to sell their work in the locality at the "regular price" (R. 89, 97, 126, 191, 231, 235, 291–292, 365, 369; Exs. 79, 108)—which of course was greatly in excess of what was being paid for the extension service (R. 83, 104, 117, 120, 122, 177, 181, 189, 194, 197, 231, 282, 291–292, 317, 320, 325, 328, 350, 353, 365; Ex. 108). All of the above representations were also false (Fdg. 13; R. 71–72).

The false representations that the books were being given away free were prohibited by the first paragraph of the Commission's order; the false representations that only the extension service was to be paid for, by the third paragraph (R. 79). The second and sixth paragraphs of the order for-

[14] When persons wrote to the Standard Education Society asking for the regular price of the work plus the extension service, they were informed that the price of both was $69.50 (R. 285; Exs. 86, 108).

bade false statements as to a special offer being made to selected individuals and as to the usual price being higher than that at which the books were being offered (R. 79). The Circuit Court of Appeals affirmed the second and sixth paragraphs of the order but reversed the first and third (R. 489).

Respondents' method of selling was based upon an integrated series of false statements, each of which was intended both to persuade the customer and to give credibility to the others. Each misstatement was a material inducement to the sale, but the customer was induced to purchase by all of them together. The plan was fraudulent in its entirety, and the court below was not warranted in looking at the false representations as separate unrelated statements and in classifying some of them as unfair and others as not likely to deceive.

Moreover, there is no reasonable basis for the distinction made by the court between the misrepresentations as to the books being free (paragraphs one and three) and paragraph six, which prohibits false statements as to the usual price. There is no difference in purpose, effect, or unfairness between stating falsely that the usual price for the books and extension service is a great deal more than $69.50 (paragraph six) and stating falsely that the books are free and that the usual price for the extension service alone is $69.50 (paragraphs one and three). It necessarily follows from the

latter representation, if believed, that the price of both together is much less than the usual price, and the sole purpose of the misrepresentation is to convey that impression. If a direct false statement as to the usual price is unfair, an indirect but more subtly effective method of giving the customer the same false belief as to the price is equally unfair. It is deceptive and misleading, and that is all the cases require. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67.

As this Court said in *Stewart* v. *Wyoming Ranche Co.*, 128 U. S. 383, 388, with respect to an action in deceit:[15]

> The gist of the action is fraudulently producing a false impression upon the mind of the other party; and if this result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, or his concealment or suppression of material facts not equally within the knowledge or reach of the plaintiff.

In *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, representations which were not

[15] At several points in this brief, the law of fraud and deceit is relied upon by way of analogy. The requirements of the law of fraud are more stringent than those of the Federal Trade Commission Act (*cf. Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304), and any methods of competition which are fraudulent are *a fortiori* unfair methods of competition.

necessarily false statements of fact were regarded as unfair because calculated to convey a false and deceptive impression. In stating the facts of that case, this Court said (p. 215):

> Respondents have circulated written and printed circulars among the trade which either directly assert, *or are calculated to convey the impression,* that their product is composed of flour manufactured by themselves from the wheat. These statements and the use of the trade names under which respondents do business have induced many consumers and dealers to believe that respondents are engaged in grinding from the wheat the product which they put out. [Italics supplied.]

There can be no question that in this case respondents' statements were deliberately intended to convey a false impression.

The decision of the court below that the prohibited practices were not unfair may have been based on one of two theories. It may be interpreted as meaning that the representations in question were not deceptive or misleading.[16] Or it may be regarded as holding that even though the representations were deceptive and misleading, they were not "unfair" as a matter of law. Either view, we submit, is demonstrably unsound.

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[16] This is apparently respondents' interpretation of the opinion. See brief in opposition to petition for certiorari, pages 6 to 8.

A. THE REPRESENTATIONS WERE DECEPTIVE

Whether or not particular representations are deceptive is a question of fact. If a false statement induces persons who would otherwise not have done so to purchase an article, it is deceptive.

The Commission found (R. 76) and the record indicates that many persons purchased respondents' reference work because they believed the representations that the books were being given to them free of charge and that they were paying only for the extension service. There is ample testimony in the record that the books would not have been purchased except for the purchasers' reliance on the truth of these representations. (See particularly R. 101, 121, 255–256, 287, 308, 328, 329, 356, 357, 106, 109, 115, 117, 123, 128.)[17]

[17] Some of the above testimony was subsequently ordered stricken from the record by the trial examiner (R. 49–63). This ruling is erroneous; the evidence proved the very important fact of reliance upon the false representations in making the purchase. The rulings of the trial examiner, not approved by the Commission, are not binding on questions of evidence. The Commission permitted the evidence to remain in the record, and the Commission itself—or a court reviewing the action of the Commission—may determine the relevance or competence of this testimony in deciding whether there is any competent evidence to support the decision. *Arkansas Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 18 F. (2d) 866, 871; *Hills Brothers* v. *Federal Trade Commission*, 9 F. (2d) 481, 484. Compare the practice with respect to masters in equity, and before the Board of Tax Appeals. *Nelson* v. *United States*, 201 U. S. 92, 114; *Blease* v. *Garlington*, 92 U. S. 1, 97; *Garden City Feeder Co.* v. *Commissioner of Internal Revenue*, 75 F. (2d) 804, 807.

Miss Alice Sterling, secretary of the Y. W. C. A. in Red Wing, Minnesota, testified (R. 255–256):

A. Well, he said, somewhat as the card said, that he was not selling; he was not their salesman; he was just sort of preparing the way; that in a short time there would be several salesmen to canvass the town, and that there were just two or three—I was one of them—a couple of others—he gave one name—who were to get this set of books absolutely free, just as the postal card had said, and it was this Standard Reference Work, and he went into detail in regard to the Work, so I just thought that as a representative of the Y. W. C. A.—they were pretty hard up anyway—that if I got anything like that, as fine as that, it was up to me to take it, and after I had really decided to take the thing he spoke of the—that was a gift, and he spoke of this Reference Work, and then he spoke of the money involved, I think $3.50 a month, and $5.50 advance fee, and I said I could hardly tie the Y. W. C. A. up for that at least without calling in the board members. Then we got to talking it over, and *I thought that if the Y. W. C. A. would get that, as a gift, I decided to take the other,* and I paid him the $5.50, * * *

Well, it seemed to me—he put it as this, "We are just giving you this. This really is a gift." He kind of obligated me. It was like he said, "If we are doing this—it seems to me that we are giving this to the Y. W. C. A., and even if the Y. W. C. A. can't use

> the loose-leaf, you could use that", and *I did that so as to get that free* as a gift to the Y. W. C. A. I felt under obligation, and I signed up really for the loose-leaf, and the Y. W. C. A. were to get the set of books, and I was really to get the loose-leaf.[18] [Italics supplied.]

Mrs. Lucy Staples Wilbur, Leaburg, Oregon, testified (R. 349):

> I understood that I was getting the books free and that I was going to pay a small amount for the loose-leaf set that I would get; I think it was to be sent quarterly.[19]

Miss Elsie Anderson, a school teacher in Portland, Oregon, testified (R. 352–353):

> He told us that we were getting the set of books as a gift and that we were a certain few out of the State who were given this offer, and the reason they were giving us this offer was that they thought it would be better to give away books than to put their money into other advertising purposes or means, and they thought by giving us a set of books

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[18] In a letter in which the Standard Education Society refused to permit the cancellation of Miss Sterling's contract, the respondent stated that the books "were a gift to you as a subscriber to the loose-leaf service for which the contract was signed" (Ex. 80).

[19] Mrs. Wilbur was approached by respondents' agent shortly after she was graduated from Normal School and before she commenced teaching (R. 350). The record indicates that a great many of the persons solicited by respondents' agents were young women just entering the teaching profession (R. 83, 89, 96, 100, 107, 111, 119, 122, 350, 351).

they would use us as an advertising means, you see.

* * * * *

Then we were to get a loose-leaf extension that was to come out for ten years every three months, four times a year, and we were paying for this extension and not for the books. The books were given to us. They told us we were getting something. Well, we thought if we were getting something we might as well get it. And the first thing we knew we were to pay for something else, not the books.

* * * * *

You see, we were getting the books free, and *we were paying the regular price for the extension* but other people were paying the regular price for the extension plus this price for the books; * * * [Italics supplied.]

Mrs. Blanche Guertin, of St. Anne, Illinois, testified (R. 227):

She told me I was getting the books, the ten volumes, as a gift, I understood, and I was to pay $69.50 for the ten years' extension service.

Miss Mary Gambee, who had been teaching school for two years in Romulus, New York, testified (R. 111–115):

He said he was not an agent and was giving these books away to a certain few special teachers, * * * then he told me he wanted to know if I wouldn't subscribe to

this magazine, this loose-leaf extension service, because that would keep the encyclopedia up to date. And I didn't want to, but he kept staying and talking, and so finally I did sign my name. * * * I was to pay a certain amount by the month for the magazine, not for the other.

Q. Not for what other?

A. For the encyclopedia. * * * I remember it was less than usual, because I didn't feel that I could pay the full amount, the usual price. [R. 111–112.]

* * * * *

Q. You understood that thereby you were promising to pay a certain amount of money?

A. Yes.

Q. In exchange for what?

A. Loose-leaf service. [R. 113.]

* * * * *

Q. If the agent in this case had offered to sell you the books and the loose-leaf extension service for $69.50, payable five dollars a month, would you have accepted his proposition?

A. No. [R. 115.][20]

Miss Opal Bryson, a school teacher in Canandaigua, New York, testified:

Q. And your understanding as to the books was what?

A. That they were to be given to me free. [R. 117.]

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[20] See note 17, *supra*, page 30.

Q. If the agent had offered to sell you this set of books with the loose-leaf extension service for the total amount of $69.50, would you have accepted his proposition?

A. No. [R. 117.] [21]

On the basis of this and other evidence the Commission found (R. 76):

> Prospective customers to whom respondents' agents made said false representations and false statements and on whom said sales methods were used, relied upon the representations and statements made by said agents as aforesaid, and purchased books and extension service * * * offered for sale and sold by respondents in the belief that the said representations and statements made by respondents' agents were true. In many instances persons purchased respondents' books and the extension service in reliance upon the said false representations and false statements, when such persons would not have purchased the said books or extension service but for the false statements and false representations made by respondents' agents * * *.

This finding of fact by the Commission, amply supported by evidence, is conclusive on the question of deception. *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U. S. 67, 73; Federal Trade Commission Act, Section 5.

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[21] See note 17, *supra*, page 30.

The court below did not in terms find that there was no evidence in the record to support the Commission's finding that persons had been deceived by respondents' false representations. The only statement in the opinion from which such an inference can be drawn is the declaration that (R. 489):

> We cannot take seriously the suggestion that a man who is buying a set of books and a ten years' "extension service", will be fatuous enough to be misled by the mere statement that the first are given away, and that he is paying only for the second.

To interpret this passage as inferentially holding that persons were not in fact deceived is to bring the decision below in direct conflict both with the mandate of the statute and with the repeated rulings of this Court that the findings of the Commission must be accepted as binding if supported by evidence.[22]

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[22] Even if the evidence had not actually shown that persons were deceived, the Commission would have been authorized to draw from it the natural inference that the representations of respondents did mislead prospective purchasers. *Brown Fence & Wire Co.* v. *Federal Trade Commission*, 64 F. (2d) 934, 936; *Federal Trade Commission* v. *Balme*, 23 F. (2d), 615, 621, certiorari denied 277 U. S. 598. "The weight to be given to the facts and circumstances admitted, *as well as the inferences reasonably to be drawn from them*, is for the commission" (italics supplied). *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63. See also *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67. The court below was not authorized to draw its own inferences from the evidence in conflict with the inferences drawn by the Commission.

Respondents take the position that there is no deception because the buyer knows exactly what he is getting and how much he is paying for it. But the most common type of unfair competition consists in causing persons to buy a product in the belief that it is manufactured by someone else. This practice is none the less unfair because the article sold is in quality exactly what the purchaser wanted or because it may be equal or superior to the product imitated. Compare *Federal Trade Commission* v. *Royal Milling Co., supra.* False representations as to the market price or market value of a commodity afford another example of deception usually held to be fraudulent, although the customer knows both what he is getting and what he is paying for the product purchased. *Zimmern* v. *Blount,* 238 Fed. 740, (C. C. A. 5th); *American Hardwood Lumber Co.* v. *Dent,* 121 Mo. App. 108, 98 S. W. 814; *Stoll* v. *Wellborn,* 56 Atl. 894 (N. J. Eq.); *Ferrell* v. *Hunt,* 189 Ind. 45, 124 N. E. 745.[23] Examples of similar frauds which do not deceive a customer either as to what he is buying or as to the price he is paying could be multiplied. The reason why all of them are regarded as fraudulent and unfair is that even though the purchaser may know what he is getting, he

[23] The cases are collected in 71 A. L. R. 622. The view of the majority of the state courts is that such representations as to market price are not mere statements of opinion. Some courts take the opposite view, when the truth is readily ascertainable by the victim of the fraud, but not when the seller is in a position to have peculiar knowledge of the facts stated.

would not have purchased at all except for the false representation.

Respondents also contend that the making of free offers is a common business practice which has never been regarded as unfair. This argument ignores both the basis for the Commission's decision and the psychological foundation for respondents' sales plan. Genuine offers to give something away free of charge in order to induce a person to buy something else are not unfair. It is a commonplace that persons may be induced to buy if they think they are getting a bargain. An opportunity to receive something free in addition to the article paid for is a powerful incentive to purchase. If a merchant thinks that his business will be benefited by the distribution of gifts, prizes, or premiums to his customers, that is his affair. His customers may gain by his apparent generosity. They cannot lose, and they are not deceived. They know that the purpose of the gift is to induce them to purchase another article, and they assume that the donor expects ultimately to recover the cost of the gift in increased returns from sales.[24]

[24] It is true that the cost of the premium is borne by the manufacturer or seller, and that this cost must eventually be recovered in the price of the product sold if the business is to operate at a profit. But if the regular price of the article sold without the premium is the same as the price with the premium the premium does not cost the customer anything. It is *free to him* regardless of whether or not it is ultimately included in the purchase price, and he does not care whether the manufacturer or dealer makes suffi-

When such an offer of a gift is made, the customer understands from the use of the word "gift" that an article is to be received without any payment being made for it. If he is told that it is to be received "free of charge" if another article is purchased, the word "free" causes him to understand that he is paying nothing for that article and only the usual price for the other. If this is not the true situation, there is no free offer and the customer is misled by the representation that he is to be given something free of charge.

Thus if the regular price of a tube of tooth paste (to use an illustration suggested by respondents) is 35 cents and a dealer advertises that he will give away a tooth brush with each two tubes purchased, the normal understanding is that the price for the two tubes and the brush will equal the regular price for the two tubes alone—70 cents. There is nothing unfair in such a transaction. But if the dealer secretly adds the regular price of the brush to the regular price of the two tubes, his statement that the brush is free and that only the tooth paste is paid for is false in fact. The fraud is not excused by the fact that the purchaser knows that he is getting two tubes of tooth paste and a tooth brush for a known price. He might not have purchased that particular brand at all if he had been aware

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cient profit on the sale to cover the cost of the premium, whether the cost is treated as an advertising expense, or whether it causes the manufacturer or dealer to operate at a loss.

of the truth as to the usual price of the tooth paste. If he is induced to buy what he did not otherwise want, through an intentional misstatement of fact, it is immaterial that he may be getting his money's worth in the transaction. *Cf. Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67.

The vice in respondents' sales plan was that they attempted to make purchasers believe that the set of books was really a gift when it was not. The entire effort of their salesmen was to convince purchasers that in return for the regular price for the extension service alone they were receiving the service and the ten-volume reference work. To have revealed the fact that $69.50 was the regular price for both would have spoiled the scheme, and accordingly the respondents were careful not to have the true situation disclosed.

If the purchaser was not sufficiently convinced by the mere statement that the books were free, the salesman explained that the regular price for both books and service together was a great deal more than $69.50 and that the loss on this particular sale was incurred because of its advertising value. In other words, respondents did everything they could to make the customer think that the free offer was an honest offer to give away one article if another was purchased at its ordinary price. Their own false statements explaining what they

meant by their free offer demonstrated that they recognized the difference between genuine free offers and what they were seeking to make the customer believe.

It is plain from the record that respondents intentionally caused many persons to believe that the regular price of the extension service alone was $69.50 (or $89.00 if other books were to be "given away free of charge"). This is the normal meaning of respondents' representation that the books were free and that only the extension service was to be paid for, and that was the meaning which respondents intended to convey. If respondents had not managed to convey that false impression, the books would not have been sold. The fact that purchasers were deceived and that respondents hoped and intended that they would be deceived by the meaning of the so-called "free offer" should be conclusive on the question of whether the representations were deceptive and unfair.

### B. THE RESPONDENTS' DECEPTIVE REPRESENTATIONS ARE NOT FAIR AS A MATTER OF LAW

If we assume that the court below did not intend to ignore the well-settled rules limiting the scope of review of Federal Trade Commission findings of fact, we must regard its decision as based on the assumption that respondents' sales methods did not constitute an unfair method of competition *even though they were false, deceptive, and mis-*

*leading*. Inasmuch as the general rule has been firmly established that competition through misrepresentation is unfair, it would appear that the court below was of opinion that this case required an exception to be made to that rule. Why certain kinds of lying should not be deemed unfair is not clearly explained in the opinion of the court below. It appears, however, from the language of the opinion and from the arguments of opposing counsel that three reasons may be urged in support of such an exception.

### 1. *The Argument That Persons Ought Not to Have Believed Respondents' Misrepresentations*

The opinion below may be regarded as resting on the principle that misrepresentations which are so obviously false that a man would be fatuous to believe them are not unfair or, stated otherwise, that false representations do not constitute unfair competition unless in the court's judgment they are of a character likely to deceive a man of ordinary prudence.

The decision below can not be supported on this ground (a) because the principle is unsound, and (b) because, even if sound, it can have no application in this case.

(a) Even respondents have recognized that acceptance of such a principle would establish "an unheard of rule of law" (Respondents' brief in

opposition to petition for writ of certiorari, p. 10).[25]

It is well settled that the illegality of fraud is not cured by the credulity of its victims. In *Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, 530, this Court, referring with apparent approval to a decision of Lord Chancellor Westbury,[26] stated:

> In considering what constitutes a material false representation, the Chancellor observed that he could not receive it as a rule, either of morality or equity, that a plaintiff is not answerable for a falsehood, because it may be so gross and palpable as that no one is likely to be deceived by it; that if there be a wilful false statement, he would not stop to inquire whether it be too gross to mislead.

The same doctrine has received the support of the various Circuit Courts of Appeals.

As the Court of Appeals of the District of Columbia stated in *Bailey* v. *Smith*, 23 F. (2d) 977, 979:

> He whose false representations have induced another to deal with him is not stand-

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[25] Respondents maintain that the court below held that no one "could be misled" by respondents' false statements. If this means that no one was misled, it is contrary to the record. See pages 30 to 35, *supra*. If it means that persons *ought* not to be misled and that if they are the law will not protect them, it is the equivalent of the rule of law apparently adopted by the Court of Appeals, which respondents admit to be "unheard of."

[26] *Leather Cloth Co.* v. *American Leather Cloth Co.*, 4 De G. J. & S. 137.

> ing upon very firm ground when he takes the position that his victim ought not to have relied upon his false statements. As observed by the court in *Strand* v. *Griffith* (C. C. A.) 97 F. 854, 856: "There is no rule of law which requires men in their business transactions to act upon the presumption that all men are knaves and liars, and which declares them guilty of negligence, and refuses them redress, whenever they fail to act on that presumption. The fraudulent vendor cannot escape liability by asking the law to applaud his fraud and condemn his victim for his credulity."

See to the same effect *Strand* v. *Griffith,* 97 Fed. 854 (C. C. A. 8th); *Pattiz* v. *Semple,* 12 F. (2d) 276, affirmed 18 F. (2d) 955 (C. C. A. 7th); *Mergenthaler Linotype Co.* v. *Evans,* 69 F. (2d) 287 (C. C. A. 9th); *Keeler* v. *Fred T. Ley & Co.,* 65 F. (2d) 499 (C. C. A. 1st); *O'Hara* v. *United States,* 129 Fed. 551 (C. C. A. 6th); *Florence Mfg. Co.* v. *J. C. Dowd & Co.,* 178 Fed. 73 (C. C. A. 2d).[27]

In *Florence Mfg. Co.* v. *J. C. Dowd & Co.,* 178 Fed. 73, 75, the Court of Appeals for the Second Circuit itself recognized that—

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[27] In *Bailey* v. *Perkins,* 224 Mich. 27, 194 N. W. 558, the Supreme Court of Michigan declared with respect to a situation very similar to the one here at bar (p. 30):

> It is doubtless true that the plaintiff was a somewhat gullible individual. But the law does not put its seal of approval upon frauds perpetrated on such individuals. In *Smith* v. *McDonald* (1905) 139 Mich. 225, 102 N. W. 738, it was said by this court: "This contention assumes that the defrauded party owes to the party who defrauded him a duty to use diligence to

> The law is not made for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances and general impressions.

Again in *Falter* v. *United States,* 23 F. (2d) 420, 424, the Court of Appeals for the Second Circuit stated that:

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> discover the fraud. There is no such obligation. One who perpetrates a fraud cannot complain because his victim continues to have a confidence which a more vigilant person would not have. The rule contended for by plaintiff, which requires the same diligence from all persons, has no application to cases of fraud. If it had, the very persons, viz., the credulous and unwary, who are the usual victims of fraud, would be at a disadvantage, and would often be denied redress."

The decisions of the state courts are not in entire accord on this question, but the trend of modern authorities favors protection of the unwary against the defrauder. (See Annotations, 61 A. L. R. 497–509.)

In reviewing the development of the law of torts during the past 50 years, Professor Francis H. Bohlen declared:

> In one particular the law of deceit has been greatly improved. The maxim *caveat emptor* has lost much of its repulsive force. This is perhaps not a new development but a movement towards a more decent concept of business ethics which has gained great momentum in the last fifty years. Many American courts no longer require every party to a bargaining transaction to regard his opponent as a swindler. The ethics of the market place are no longer thought too ignoble a thing for the law, at one time administered by the landowning class, to reform. [Bohlen, *Fifty Years of Torts*, 50 *Harv. L. Rev.* 1225, 1246 (1937).]

> When the parties do not have equal means of knowledge, it is immaterial that the victim, if more suspicious, could have discovered the cheat.

*John C. Winston Co.* v. *Federal Trade Commission,* 3 F. (2d) 961 (C. C. A. 3rd), upon which respondents rely, is not inconsistent with the above authorities. Although there is language in that decision which appears to conflict with the principles approved by the other circuit courts of appeal and by this Court, examination of the facts of the case discloses that no real conflict exists. The *Winston* case is discussed and distinguished below. (See page 53 to page 56, *infra.*)

In this case the parties did not have equal means of knowledge. Respondents and their salesmen alone knew the prices charged for their encyclopedias. There was no method by which prospective purchasers could verify the statements of respondents' salesmen as to the regular price of respondents' books and extension service. If they had written to the respondents' main office, the representations of the agents that the books were free would have been reaffirmed. (R. 271; Ex. 80.)

The law does not exist merely for the protection of those members of a community able to care for themselves. On the contrary, courts of justice exert every effort to protect the young and the incompetent—those classes most likely to be imposed upon—against the defrauder. Even if the court below were correct in assuming that ordinary per-

sons would not be deceived by respondents' selling plan, respondents' practices would be unfair if directed at a class of persons who would be, and were, in fact, deceived. "It is as much an actionable fraud wilfully to deceive a credulous person with an improbable falsehood as it is to deceive a cautious, sagacious person with a plausible one." *Barndt* v. *Frederick,* 78 Wis. 1, 11, 47 N. W. 6, 9.

(b) But even if it is assumed that misrepresentations are not unfair unless they are likely to deceive men of ordinary prudence, the respondents can find no comfort in that principle. The record in this case shows that in fact respondents' false statements misled and deceived persons who were not incompetent, stupid, or unintelligent.

A great many of the witnesses, and presumably a large proportion of the persons solicited, were young women entering the teaching profession. (R. 81, 88, 90, 94, 104, 107, 110, 118, 121, 186, 232, 267, 281, 348, 351). Others were college professors (R. 131, 135, 288, 324, 330, 338, 342), physicians (R. 284, 286, 291, 303, 306, 313, 329), club women and mothers of high school students (R. 165, 168, 178, 182–183, 202)—the classes who would be expected to furnish the market for the reference work respondents sell. A few were business men (R. 96, 239, 297, 299, 311, 344), but persons of business experience would be less likely to be taken in by respondents' false representations. It may be true that business men or lawyers generally have been trained by experience not to

believe all that is told them, and that such persons might not "be fatuous enough to be misled" by respondents' false representations. But the record shows that respondents' sales efforts were aimed primarily at persons who were not familiar with the sharp practices of the market place, who were not trained to protect themselves against the plausible falsehoods of respondents' glib salesmen, and who assumed that they would be dealt with fairly and honestly.

The persons who were deceived by respondents' scheme were not dullards. On the whole they were of more than average intelligence. The fact that such persons as teachers and doctors were deceived demonstrates that many respectable and intelligent persons can be and will be misled by representations such as were made by respondents.

### 2. *The Argument That Purchasers Are Not Injured by the Misrepresentations*

The court below intimated that respondents' misrepresentations were not unfair because purchasers would not be damaged even though they believed the falsehood as to the books being given away (R. 489). This opinion seems to rest on the assumption that since the purchasers knew what they were getting and what they were paying, they were not injured. It expresses, in a slightly different manner, respondents' argument that persons were not deceived by the false representations, even

though they believed them and would not have purchased the encyclopedia except for them. It has been shown above (pages 36 to 40, *supra*) that such representations were in fact deceptive and that the argument is unsound.

The argument is similar to the one made and rejected in *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, that a false representation as to the class of manufacturers of the commodity was not unfair because the customer received an article equally as good as he expected and therefore was not damaged. This Court there declared (pp. 216–217):

> If consumers or dealers prefer to purchase a given article because it was made by a particular manufacturer or class of manufacturers, they have a right to do so, and this right cannot be satisfied by imposing upon them an exactly similar article, or one equally as good, but having a different origin. Here the findings of the commission, supported by evidence, amply disclose that a large number of buyers, comprising consumers and dealers, believe that the price or quality or both are affected to their advantage by the fact that the article is prepared by the original grinder of the grain. The result of respondents' acts is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin. We are of opinion that the purchasing public

> is entitled to be protected against that species of deception, and that its interest in such protection is specific and substantial.

See also *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S., at 78.[28]

The prospective purchasers in this case are injured if they pay $69.50 for an encyclopedia they did not want and would not have bought except for their reliance upon respondents' false representations. The fact that the reference work may ordinarily have sold for $69.50 does not make the injury any the less real to them, because they have given up $69.50 which they would have retained except for the false statements.

### 3. *The Argument That Respondents' Misrepresentations Are Mere Trade Puffing*

It might be urged that the representations here in question fall in the class of trade puffing, and that such puffing is not unfair competition. Trade puffing is usually understood to cover exaggerated opinions as to value and quality, not definite misstatements of fact. *United States* v. *New South Farm Co.*, 241 U. S. 64; *cf. Fairyfoot Products Co.*

[28] In *Wilson* v. *United States*, 190 Fed. 427 (C. C. A. 2nd), previously before this Court on other grounds, 221 U. S. 361, it was held that damage to the purchaser was not an essential element of the criminal offense of using the mails to defraud, whatever might be the rule in civil suits for damages. Proof that the property misrepresented was worth less than the price paid was held unnecessary. The same policy should be applicable under the Federal Trade Commission Act.

v. *Federal Trade Commission,* 80 F. (2d) 684 (C. C. A. 7th); *Ostermoor & Co.* v. *Federal Trade Commission,* 16 F. (2d) 962 (C. C. A. 2nd); *New Jersey Asbestos Co.* v. *Federal Trade Commission,* 264 Fed. 509 (C. C. A. 2nd); *Vulcan Metals Co.* v. *Simmons Mfg. Co.,* 248 Fed. 853 (C. C. A. 2nd).

The representations by respondents that their reference work was given away free and that only the extension service was to be paid for were statements of fact, not of opinion. Such deliberate falsehoods with respect to actual facts have never been regarded as legitimate or fair. *United States* v. *New South Farm Co.,* 241 U. S. 64, 71; *Harris* v. *Rosenberger,* 145 Fed. 449, certiorari denied 203 U. S. 591.[29]

This applies to misrepresentations with respect to price,[30] as well as to misrepresentations of quality (*Federal Trade Commission* v. *Algoma Lumber Co., supra*), or origin (*Federal Trade Commission* v. *Royal Milling Co., supra*). The court below itself recognized that the false statement that respondents' books were being sold below the usual price was unfair.[31] This ruling that a false state-

[29] In *Colburn* v. *United States,* 223 Fed. 590 (C. C. A. 8th), the court intimated that a deliberate attempt to defraud could never be justified on the ground that it was mere trade puffing.

[30] Statements as to *value* are, of course, distinguishable. Even such statements, however, when made with respect to commodities having a definite market value, are fraudulent. See page 37, *supra.*

[31] The court affirmed paragraph 6 of the Commission's order prohibiting such false statements.

ment of fact as to price is forbidden by the Federal Trade Commission Act is supported by other decisions in the Circuit Courts of Appeals. In the first case arising under the Federal Trade Commission Act, *Sears, Roebuck & Co.* v. *Federal Trade Commission,* 258 Fed. 307, the Court of Appeals for the Seventh Circuit held that the Act was violated by false representations that Sears, Roebuck was selling sugar at a price lower than that of its competitors because of its large purchasing power, when the truth was that the sugar was sold below cost as a "loss leader" to induce the purchase of other commodities.[32] In *Brown Fence & Wire Co.* v. *Federal Trade Commission,* 64 F. (2d) 934, the Circuit Court of Appeals for the Sixth Circuit held that a false representation that goods were cheaper because sold "direct from factory" to customer, when such was not the case, was an unfair method of competition.

The cases dealing with the very practices here in question in the encyclopedia industry, which are most closely in point, also support the position that

[32] The court held that although selling below cost was not unfair, the making of false representations with respect to the low price was unfair. In the *Sears, Roebuck* case, one of the practices forbidden was that of selling at less than cost on condition that customers purchase other goods at the same time, when accompanied by a false representation that the low price was due to large purchasing power. This closely resembles the practices of respondents here.

false representations as to price are unfair.[33] They are discussed at length immediately below.

### 4. *The Winston and Consolidated Book Publishers Cases*

*John C. Winston Co.* v. *Federal Trade Commission,* 3 F. (2d) 961 (C. C. A. 3rd), certiorari denied 269 U. S. 555, and *Consolidated Book Publishers Inc.* v. *Federal Trade Commission,* 53 F. (2d) 942 (C. C. A. 7th), certiorari denied 286 U. S. 553, both dealt with unfair practices similar to those of respondents in the sale of encyclopedic reference works. The Court of Appeals regarded these cases as conflicting, and assumed that the *Winston* case supported its decision. Close examination of the cases will reveal that the *Winston* case clearly does not support the decision below, and that the *Consolidated* case is in direct conflict with it.

The *Winston* case was decided by the Court of Appeals for the Third Circuit in 1925. The facts were stipulated. It was shown that before the Federal Trade Commission commenced its investigation, the Winston Company, a publisher of reference works and an extension and research service similar to those distributed by respondents, furnished its salesmen with subscription blanks reading, in so far as is here relevant, as follows:[34]

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[33] False statements as to price are now generally regarded as fraudulent in actions for fraud and deceit, although the state courts are divided on the question. See the annotations in 71 A. L. R. 622, 66 A. L. R. 188.

[34] The parts of the contracts here quoted were described in the opinion of the Circuit Court of Appeals, 3 F. (2d) 961–

ADVERTISING DEP'T—SPECIAL CONTRACT

| | | |
|---|---|---|
| Please send to me— | | |
| WINSTON'S ENCYCLOPEDIA IN TEN VOLUMES | ~~$55.00~~ | |
| WINSTON'S ANNUAL SERVICE FOR 10 YEARS | ~~40.00~~ | |
| INTERNATIONAL BUREAU OF RESEARCH SERVICE FOR 10 YEARS | | |
| | ~~$104.00~~ | $49.00 |
| For which I agree to pay | ~~$104.00~~ | $49.00 |

The regular price at which the encyclopedia and the two services were ordinarily sold was $49.00. With respect to this practice, the Court of Appeals said, "When the Federal Trade Commission inquired into its practices the company consulted counsel who gave it the sound advice to stop this method of sale. This it did at once; and it did it in evident good faith. Later, however, the company adopted another method which consisted of furnishing its salesmen with subscription blanks containing substantially the same wording as the former but omitting the printed prices." 3 F. (2d) at 961–962. The new subscription blanks read substantially as follows: [35]

Please send to me—

WINSTON'S ENCYCLOPEDIA IN TEN VOLUMES
WINSTON'S ANNUAL SERVICE FOR 10 YEARS
INTERNATIONAL BUREAU OF RESEARCH SERVICE FOR 10 YEARS

For which I promise to pay ..... $49.00

962. The excerpts quoted are copied directly from the record in the *Winston* case in this Court, No. 511, October Term 1925, R. 21, Exhibit B.

[35] No. 511, October Term 1925, R. 25, Exhibit D.

It should be noted that the phrase "Advertising Dep't—Special Contract" written at the top of the original contract was omitted from the second, and that all representations as to the usual price for all three services together being greater than $49.00 were also omitted.

Although it was contended that the latter form of contract conveyed the impression that the price was a special one paid only for the two services and that the ten-volume work was free, the contract contained no statement that the encyclopedias were free and the court did not refer to any such representation in its opinion. In fact, the record in the *Winston* case contains no evidence of any such misrepresentation after the second form of contract was substituted for the first.[36] The Circuit

[36] The stipulation of facts in the *Winston* case contains the following paragraph (R. 145–146, No. 511, October Term 1925):

> Since May 1, 1923, and up to the date hereof, the respondent through its said agents and salesmen represented and still represents to the aforesaid purchasers and prospective purchasers that the said price of $49 represents *the fair value* of the said Annual and Research Services, and that by obtaining not only the said Services but also the ten volumes of the encyclopedia for that price the purchaser *in effect* would obtain the said ten volumes free of charge. [Italics supplied.]

On the basis of this paragraph, and this alone, the Commission made findings that the agent of respondents had represented that $49 was the *value* (not the regular price) of the research and extension services, and that thus they were *in effect* obtaining the ten volumes free of charge. 8 F. T. C. 185. There is a substantial difference between a representation as to the value of a service and the effect of

Court of Appeals refused to pass upon the validity of the first practice of the Winston Company on the ground that it had been discontinued. It was with respect to the second kind of sales blank that the court said (p. 962):

> It is conceivable that a very stupid person might be misled by this method of selling books, yet measured by ordinary standards of trade and by ordinary standards of the intelligence of traders, we cannot discover that it amounts to an unfair method of competition within the sense of the law.

This language must obviously be read in the light of the facts of the case before the court. This Court denied certiorari. 269 U. S. 555.

The plan abandoned by the Winston Company upon the commencement of the Federal Trade Commission investigation is in substance the same as that practiced by respondents here.[37] Although the unfairness of this plan was not passed upon by the court, the opinion indicates clearly that the plan was not approved. The second practice, which the court found not unfair, involved no false representations. Accordingly the case can not be regarded as supporting the decision of the court below in the instant case that the false statements here in question are not unfair.

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a purchase at a particular price and specific false statements that the regular price of the service is $69.50 and that the ten volumes are in fact being given away free.

[37] In some instances the representations by respondents' agents were almost identical with the plan abandoned by the Winston Company. See Exhibit 133; R. 365, 375, 376.

In the *Consolidated Book Publishers* case, 53 F. (2d) 942, the Circuit Court of Appeals for the Seventh Circuit upheld an order of the Federal Trade Commission prohibiting a sales plan substantially identical with that involved in the instant case. The second and the fourth paragraphs of the Commission's order in that case are almost identical with the first and third paragraphs of the Commission's order here.[38] The letter sent out by the publishers in that case (printed at 53 F. (2d) 943) is almost identical with Exhibits 10, 14, 24, 27, 35, 40, 43, and 48 here. Salesmen represented falsely to prospective purchasers in that case that the books were being given away free of charge, and that the amount paid was the price of the extension service alone.[39]

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[38] Compare the provisions of the order quoted in 53 F. (2d), at 942, with the order in this case (R. 79).

[39] In the *Consolidated* case, the publisher was also guilty of subsequently charging 20¢ extra for each issue of the extension service after having assured the purchaser that the original price was all that he had to pay, and of representing that it had an expert research bureau when such was not the case. But these added factors do not justify those provisions of the Commission's order which prohibited the false representation as to the gift of the encyclopedia, and accordingly afford no basis for distinguishing the two cases. In any event, if misrepresentations made with respect to other matters warranted the Commission's order in that case, the misrepresentations made in this case in addition to those forbidden by the first and third paragraphs of the Commission's order should have the same effect. See paragraphs 2, 4, 5, 6, 7, 8, 9, and 10 of the Commission's order (R. 79–80).

The Circuit Court of Appeals characterized the practice prohibited by the Commission as a "fraud", and held that the Commission's order came within the rule of *Federal Trade Commission* v. *Winsted Hosiery Co., supra.* The Publishing Company petitioned for certiorari, alleging *inter alia* that the writ should be granted because the decision was in conflict with the *Winston* decision of the Circuit Court of Appeals for the Third Circuit. See petition for certiorari, No. 843, October Term 1931, pages 2 and 4. The government, opposing certiorari, maintained that the decisions did *not* conflict, inasmuch as the *Winston* decision "involved only the use of subscription blanks listing as articles to be sold an encyclopedia and two accompanying services, a single price for all three items being written in red ink" (brief in opposition, *id.*, p. 14).

This Court denied certiorari, 286 U. S. 553. Presumably the writ would have been granted if the *Winston* case had been regarded as having the effect respondents seek to give it now, for in that event there would have been a conflict between the decisions in the seventh and third circuits.[40]

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[40] Respondents also rely on *Chicago Portrait Co.* v. *Federal Trade Commission*, 4 F. (2d) 759 (C. C. A. 7th, 1925), certiorari denied 269 U. S. 556, decided by the same Circuit Court of Appeals that decided the *Consolidated Publishers* case in 1931. Inasmuch as the same court subsequently held unlawful the very practices now engaged in by respondents, the earlier case can not be regarded as authority in support of the decision below. It was pointed out in the *Portrait*

C. THE FALSE REPRESENTATIONS THAT RESPONDENTS' BOOKS WERE TO BE GIVEN AWAY WERE AN INTEGRAL PART OF RESPONDENTS' FRAUDULENT SCHEME AND CANNOT BE SEPARATED FROM THE REMAINDER

The record demonstrates that the false representation that the encyclopedias were to be given away without charge was the foundation of respondents' sales plan. In order to bolster up the salesmen's stories in this regard, it was also represented (1) that the offer was open only to a few selected individuals and (2) that the regular price of the whole set greatly exceeded $69.50. The court below regarded the last two statements as unfair, although they clearly appear to be subordinate to the basic misrepresentation which the court held not to be unfair.

The court may have been of opinion that the false statement as to the "free offer" *alone* would not have deceived prospective purchasers sufficiently to induce them to buy. The record does not support this conclusion. (See pages 30–35, *supra*.) But even if it be assumed that this were the case, the decision below would not be justified. For the Act makes unlawful and authorizes the Commission to prohibit "unfair methods of competition," and this necessarily implies that all of the misleading acts of which the unfair method of competition is comprised may be prohibited.

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case that there was no testimony that customers had actually been deceived and that, so far as appeared, all competitors used the same objectionable methods of competition. 4 F. (2d) at 761.

It is well established in the law of fraud that a false representation need not be the sole inducement to a contract if it is a material inducement. *Farrar* v. *Churchill,* 135 U. S. 609, 615; *Tooker* v. *Alston,* 159 Fed. 599, 604; *Davis* v. *Louisville Trust Co.,* 181 Fed. 10, 21; 26 Corpus Juris 1165–1166. Even if the remaining representations are true, a single material false representation which is one of the inducements upon which a person relies in making a contract constitutes actionable fraud. 26 Corpus Juris 1166. *A fortiori,* where, as here, all the representations inducing the purchase are false, no single misrepresentation can be excused on the ground that it alone would not have been sufficient to bring on the sale.

If the misrepresentation as to the free offer in this case would not deceive by itself, neither would any of the other false representations made. A purchaser would ordinarily not be induced to buy by a representation that he was on a selected list of favored persons, if nothing was said about a reduced price. Statements that the price at which the books were offered was below the regular selling price might not have been believed without the added representation that the loss on this particular sale was assumed as an advertising expense. Thus if the court was to look at each item separately to see whether it alone would deceive, no part of respondents' fraudulent scheme might be called "unfair."

Such a construction of the phrase "unfair methods of competition" would go far toward nullifying the statutory provision, since many unfair methods of doing business are made up of separate statements or representations, none of which might be sufficient by itself to deceive. If respondents adopt a fraudulent selling plan made up of a number of false representations, all of the false statements which comprise the scheme are parts of the "unfair method of competition" forbidden by the law. Respondents established their scheme as an integrated whole; it must be treated as a whole if the statutory prohibition is to be effective.

## II

### The Practices of Respondents Constitute Methods of Competition in Interstate Commerce

The court below found that the Commission was justified in finding that the forbidden practices affected interstate competition (R. 488). Inasmuch as respondents may urge here, as they did below, that the Commission's findings in this respect are unsupported by evidence, we will discuss the question briefly.

The record establishes that the respondent corporations compete with other publishers in selling their reference work in interstate commerce. This was admitted both in respondents' answer [41] and by

[41] The complaint alleged that respondent competed in interstate commerce with other publishers (R. 2–3, 22). This was not denied in the answers of the Standard Education

Mr. Stanford on the witness stand (R. 384, 419). The record also shows that at least one publisher of a competing reference work does not engage in the unfair sales method employed by respondents (Fdg. 9, R. 68, 163–165).[42] It also shows that many persons purchased respondents' publications who would not have done so except for the false representations made to them (Fdg. 19, R. 76; see pp. 30–35, *supra*). From these facts the Commission was entitled to draw the logical inference that respondents' unfair practices would be likely to divert trade from other competitors to respondent.

It is well established that the inferences to be drawn from the facts in the record are for the Commission to determine. See note 22, *supra*, page 36.

If the Commission has before it evidence of competition it need not have testimony as to actual cases of diversion of trade from one competitor to another in order to warrant the conclusion that trade will be diverted. *Federal Trade Commission*

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Society or the Standard Encyclopedia Corporation (R. 8, 27), and accordingly must be deemed admitted. See Rules of Practice of the Federal Trade Commission, Rule III (of which respondents were given notice, R. 6, 25–26), which provides that "any allegation of the complaint not specifically denied in the answer unless respondents shall state in the answer that respondents are without knowledge shall be deemed to be admitted to be true and may be so found by the Commission" (R. 6, 25–26).

[42] The competing work was named the New Students Reference Work. Respondents represented that their work would be valuable for students (see testimonials on Exhibit 11) and there was evidence that the work was of value to students (R. 310, 315, 371–372, 148, 182–183).

v. *Raladam Co.*, 283 U. S. 643, 651, 653; *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615, 621, certiorari denied 277 U. S. 598; *Brown Fence & Wire Co.* v. *Federal Trade Commission*, 64 F. (2d) 934; *Ohio Leather Co.* v. *Federal Trade Commission*, 45 F. (2d) 39, 41.

In the court below respondents relied upon the *Raladam* case to support their contention that the practices involved in this case were not methods of competition in interstate commerce. But that case required only that it appear "by proof" or "by necessary inference" "that there be present or potential substantial competition" threatened with injury (283 U. S. at 651). There was in that case no proof of "any real competition * * * in the interstate market" (283 U. S. 643, 652). In the instant case, the existence of interstate competition is admitted. The *Raladam* case is thus clearly distinguishable.

The same argument made by respondents was rejected in *Consolidated Book Publishers, Inc.* v. *Federal Trade Commission*, 53 F. (2d) 942 (C. C. A. 7th), certiorari denied 286 U. S. 553.[43]

[43] It is significant that the *Consolidated* case was decided after the decision of this Court in *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643. The record in the instant case is, of course, not exactly the same as in the *Consolidated* case. The orders of the Commission in the two cases were issued at about the same time, however (the order in the *Consolidated* case was issued May 6, 1930, and in the instant case December 24, 1931), and there can be no question that competitive conditions in the industry did not substantially change during that period.

## III

### The Respondents Stanford, Ward, and Greener Were Properly Included in the Commission's Order

The respondent Stanford is president, general manager, a director, and owner of 250½ shares out of the 536 shares of stock of the Standard Education Society, and was one of the three incorporators and acting president of the Standard Encyclopedia Corporation[44] (R. 12, 381–383, 398, 412). The respondent Ward was vice-president, secretary, sales manager, a director, and owner of 250½ shares of the stock of the Standard Education Society (R. 30, 383, 406, 412, 424), and an incorporator and director of the Standard Encyclopedia Corporation (R. 30, 424). The respondent Greener was in charge of the financial affairs of the Standard Education Society as auditor and manager, owned 35 shares of the stock of that Society,[45] and was one of the three original incorporators of the Standard Encyclopedia Corporation (R. 32–33, 406, 426–427, 467). Stanford, Ward, and Greener

[44] The Standard Encyclopedia Corporation did not formally elect officers, and issued no stock (R. 416, 417, 424). Mr. Stanford admitted on the stand that he was a director of the corporation (R. 423). In their respective answers Mr. Ward admitted that he was (R. 30), and Mr. Greener that he had been (R. 32–33), a director, but Mr. Ward testified that he did not know if any formal action had been taken as to directors (R. 424).

[45] Stanford testified that Greener was a director of the Standard Education Society (R. 412), but Greener testified to the contrary (R. 427).

together owned all the stock [46] and, in so far as it appears, filled all the offices, were the sole directors and were in every respect the sole managers of the business carried on by both the Education Society and the Encyclopedia Corporation (Fdg. 5, R. 67). These three persons were directly and solely responsible for all the activities of the respondent corporations.

The Commission had made the Standard Education Society and Stanford parties to its original complaint filed on February 25, 1929 (R. 2). During the summer of 1929, after much of the evidence in this case had been introduced, the Standard Encyclopedia Corporation was organized with Stanford, Ward, and Greener as sole incorporators (R. 404). The name of the respondent publication was changed from Standard Reference Work to Standard Encyclopedia, and the latter was sold to the public in the name of the new corpora-

[46] The distribution of stock described in the text was as of the date of the hearing before the trial examiner. The total authorized stock issue of the Standard Education Society was a thousand shares (R. 382). In addition to the stock owned by Stanford, Ward, and Greener, a number of sales directors and salesmen had formerly been stockholders, but all of their stock had been bought in by the corporation during the early part of 1929 and none of it had been reissued (R. 382–383, 406). This explains the significance of the ownership of exactly 250½ shares each by Stanford and Ward. Its obvious purpose was to retain in their hands complete control of the corporation through ownership of 501 out of the 1,000 authorized shares, the remaining being owned by subordinate officers and employees.

tion (R. 404–406). This fact was not disclosed to the Commission until the final day of the hearing under its original complaint (R. 16). To prevent what it regarded as an attempted evasion of its jurisdiction, the Commission then issued a supplemental complaint making the Standard Encyclopedia Corporation, Ward, and Greener respondents along with the Standard Education Society and Stanford (R. 20–26). The order finally entered by the Commission prohibited all the respondents, individual and corporate, from engaging in each of the unfair practices carried on in the name of the respondent corporations (R. 78–80).[47]

The court below modified the order of the Commission in so far as it included respondent Stanford in the tenth clause and Ward in the seventh, ninth, and tenth; and it reversed the order completely as to Greener. We do not raise here any contention as to the tenth clause of the Commission's order. Accordingly, the questions presented relate to the exclusion of Ward from the seventh and ninth clauses and of Greener from the entire order.

Consideration of these questions requires an examination of the scope of the power of the Commission over persons who control, manage, and are responsible for the activities of corporations engaging in unfair methods of competition. The gov-

[47] The Standard Encyclopedia Corporation was not bound by the tenth clause of the order (R. 79–80).

ernment submits that the Commission may properly include the individual officers, directors, and stockholders of a corporation within the scope of a cease and desist order, (a) if they are personally responsible for the wrongful acts of the corporation, or (b) if it is necessary to include them to prevent evasion of the order. Under the first of these theories the order of the Commission should have been affirmed as to Stanford and Ward, and under the second, as to Stanford, Ward, and Greener.

A. STANFORD AND WARD WERE BOTH PERSONALLY RESPONSIBLE FOR THE UNFAIR PRACTICES OF THE CORPORATE RESPONDENTS

The Government does not contend, of course, that one is personally responsible for the unlawful acts of a corporation merely because he is a stockholder, a director, or an officer of the company. But the persons who manage corporate affairs cannot escape liability for unlawful acts which they personally control and supervise by hiding behind the corporate entity. This is generally recognized. *Tyler* v. *Savage*, 143 U. S. 79; *McCandless* v. *Furlaud*, 296 U. S. 140, 165; *National Cash-Register Co.* v. *Leland*, 94 Fed. 502 (C. C. A. 1st); *Saxlehner* v. *Eisner*, 147 Fed. 189 (C. C. A. 2d), certiorari denied 203 U. S. 591; *Hitchcock* v. *American Plate Glass Co.*, 259 Fed. 948 (C. C. A. 3d); *Denominational Envelope Co.* v. *Duplex Envelope Co.*, 80 F. (2d) 186, 194 (C. C. A. 4th); *Barry* v. *Legler*, 39 F. (2d) 297 (C. C. A. 8th); *Northwest Theatres Co.* v. *Han-*

*son,* 4 F. (2d) 471 (C. C. A. 9th); *Robert Findlay Mfg. Co.* v. *Hygrade Lighting Fixture Corp.,* 288 Fed. 80 (E. D. N. Y.); *United States* v. *Winslow,* 195 Fed. 578, 581 (D. Mass.), affirmed on other grounds 227 U. S. 202.

The language of the Court of Appeals for the Second Circuit in *Saxlehner* v. *Eisner,* 147 Fed. 189, 191, certiorari denied 203 U. S. 591, is peculiarly appropriate in the case at bar. The court there said with respect to the personal liability of the executive officers of a corporation:

> * * * No one can read the testimony of the defendants including that taken in the suit against the corporation (which was put in evidence here) without being convinced that they were practically the corporation, managing it, and controlling its affairs as if it were a partnership, with themselves sole partners; that the scheme of pirating complainant's label originated with them, was worked out and carried into effect by their personal exertions; and that in reality the corporation was but the cover for their individual enterprises. Under such circumstances there might be a failure of justice if the plaintiff who has seen his trade-marks boldly appropriated for many years should be denied any relief against the individuals through whose pernicious activity alone he has been made to suffer the consequent loss.

The court below recognized and accepted these principles. It found that (R. 488):

> Stanford and Ward were jointly in complete control of both companies; as we have said, Stanford was not only president, but acted as general manager, and he was shown to have personally conducted the correspondence. Ward was sales manager, and necessarily familiar with what advertisements went out, and with the general sales policy of the company. This was enough to hold each personally for any "unfair" advertisements or sales methods, with certain exceptions to be noted later.

In excluding Ward from the operations of the seventh and ninth paragraphs of the Commission's order, however, the court below apparently assumed that in order to show personal participation by any individual in a corporate activity, there must be *direct evidence* of his personal connection with that activity. Such a rule might ordinarily be satisfactory. But it is not appropriate when one or two individuals are the controlling stockholders, directors, officers, and managers of a corporation and completely control its operations; in those circumstances the Commission or a court may infer without further evidence that they are personally responsible for the policies and acts of the corporation and its minor employees.

The Circuit Court of Appeals held that since Ward was sales manager of the Standard Education Society, he could not have been involved in the activities forbidden by the seventh and ninth paragraphs of the Commission's order—the use of garbled testimonials and false lists of contributors. But Ward was not merely a sales manager. He was vice-president, secretary, one of the two controlling stockholders,[48] and a director. See page 64, *supra*. A letter written by him in Stanford's absence, in answer to a complaint about a false testimonial, indicates that both he and Stanford were familiar with the advertising of the respondent corporation.[49] The testimonials and list of contributors were displayed by salesmen working under Ward's immediate supervision. The use of these materials was thus subject to the control both of the president, Stanford, and of the sales manager, Ward.

The Commission has the power to draw inferences of fact from the evidence before it. *Federal Trade Commission* v. *Pacific States Paper Trade*

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[48] That Stanford and Ward controlled the corporation jointly is indicated by the distribution of the stock so as to give both together stock control, when all the stock was issued, through ownership of 501 of the 1,000 shares. See note 46, *supra*, page 65.

[49] In Exhibit 64, a letter from Mr. Ward to Professor Goode of the University of Chicago, Mr. Ward stated "I am familiar with the situation and I have direct charge of the sales organization, so I can give you the immediate assurance that the proper action will be taken."

*Association,* 273 U. S. 52, 63; *Federal Trade Commission* v. *Algoma Lumber Co.,* 291 U. S. 67, 73. In the exercise of this power the Commission properly found that Ward and Stanford were jointly responsible for the activities of the respondent corporation. This finding was conclusive because it was supported by substantial evidence. It was error for the court below to substitute its judgment for that of the Commission and to modify those provisions of the cease and desist order which were based upon this finding.

B. A DECREE BINDING THE INDIVIDUAL RESPONDENTS WAS WARRANTED AS A MEANS OF PREVENTING EVASION OF THE COMMISSION'S ORDER

It is a familiar practice in suits against corporations to insure enforcement of judicial decrees by applying them both to the corporation and to its officers, agents, or employees. See *Wilson* v. *United States,* 221 U. S. 361, 376; *Mayo* v. *Dean,* 82 F. (2d) 554, 556 (C. C. A. 5th). The orders of the Federal Trade Commission are customarily drawn in the same manner. See *Federal Trade Commission* v. *Hoboken White Lead & Color Works,* 67 F. (2d) 551 (C. C. A. 2d); *Federal Trade Commission* v. *Civil Service Training Bureau,* 79 F. (2d) 113, 116 (C. C. A. 6th); *Federal Trade Commission* v. *Wallace,* 75 F. (2d) 733, 738 (C. C. A. 8th).

The purpose of this device is to make judicial decrees effective without attempting the impossible task of naming all the employees of a company who

might disobey. The device renders it unnecessary for the Commission to name the officers and agents of a corporate respondent in its order. But if the Commission can identify the persons whom it deems most likely to violate the order, it is certainly not improper to name them. See *Guarantee Veterinary Co.* v. *Federal Trade Commission,* 285 Fed. 853, in which the president and manager of a corporation was made an individual party to the suit. *Cf. Mayo* v. *Dean, supra.*

When there is a possibility that the business may be transferred from the corporation subject to the Commission's order to a new organization operated by the same individuals, the Commission's order may be ineffective if the individual officers and agents are not named in it. If the corporation ceases to do business and the illegal activities are carried on individually or through another company, the individuals involved may assert that they are no longer agents or employees of the corporation which was a party to the decree and that accordingly they are no longer bound by it.

If such a stratagem is to be prevented, the Commission must have power to make the individual owners and managers of a company parties to its proceeding and order, regardless of whether or not they have been proved to be personally responsible for the unfair method of competition. As the Circuit Court of Appeals for the Eighth Circuit declared in *Federal Trade Commission* v. *Wallace,* 75 F. (2d) 733, 738, the "decree should be broad

enough to give effective relief and to prevent evasion."

In *Local 167* v. *United States*, 291 U. S. 293, this Court stated, with respect to an equity decree under the Sherman Act, (at p. 299):

> The United States is entitled to effective relief. To that end the decree should enjoin acts of the sort that are shown by the evidence to have been done or threatened in furtherance of the conspiracy. *It should be broad enough to prevent evasion.* In framing its provisions doubts should be resolved in favor of the Government and against the conspirators. *Warner & Co.* v. *Lilly & Co.*, 265 U. S. 526, 532. [Italics supplied.]

The scope of the Commission's power to frame its orders, which are enforceable only through affirmance by a court similar to a court of equity, should be equal to that of a court of equity.

A decree binding the individual respondents was particularly appropriate in the case at bar. After the Federal Trade Commission proceeding had been begun, the respondents Stanford, Ward, and Greener *did* organize a new corporation to distribute their encyclopedias under a new name, and the Commission issued a supplemental complaint in order to bind the new company by its order (R. 16–21). In order to prevent the use in the future of a new corporation to evade the order, the Commission made Stanford, Ward, and Greener parties to the proceeding.

Whether or not the individual respondents were in fact attempting to avoid the effect of the Commission's order by the formation of the new company,[50] the Commission's order was proper as a means of preventing such attempts at evasion in the future. The orders of the Commission operate *in futuro*; their purpose is to protect the public and competitors against methods of competition deemed unfair. The Commission should have broad discretion to frame its orders so as to achieve that purpose. That discretion is clearly not abused by making the order personally applicable to the individuals who completely control and dominate a corporate respondent.

This is certainly true here where the parties have shown a prior willingness to shuffle corporate

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[50] Respondent Stanford, obviously an interested witness, explained that the new corporation was organized for a legitimate purpose (R. 404), but the Commission did not believe him. In its findings it declared (Fdg. 20, R. 76):

> The Commission concludes and infers from the record in this case and so finds that this corporation [the Standard Encyclopedia Corporation] was organized by the individual respondent for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent Standard Education Society.

The Commission clearly is the judge of the credibility of the witnesses appearing before it. *Wholesale Grocers' Ass'n* v. *Federal Trade Commission*, 277 Fed. 657. Study of Stanford's testimony indicates that he was an evasive rather than a frank witness (R. 435, 430–431, 433, 438, 383, 384, 398, 399, 419).

entities. Stanford, Ward, and Greener were made parties to the present proceeding because they were the incorporators of the new corporation, and because they would, in all probability, be the incorporators of any other new corporation to be formed in the future as a means of evading the Commission's order. The order binding them individually should have been affirmed.

### C. THE INDIVIDUAL RESPONDENTS WERE ENGAGED IN INTERSTATE COMPETITION

The individual respondents urged below that they were not subject to the jurisdiction of the Commission because they were not *individually* engaged in interstate competition but acted only as agents of the corporations. Regardless of whether or not they were acting as agents, they were personally responsible for the sale and distribution of the encyclopedias in interstate commerce and for the unfair methods of competition used in connection therewith. They were not subject to the control of any superior officer; they were the supreme managers of the business. The authorities already cited make it plain that the fact that their unlawful conduct was carried on in the name of the corporations does not shield them. See page 67, *supra*. An identical argument was rejected by the Court of Appeals for the Second Circuit in *Guarantee Veterinary Co. v. Federal Trade Commission*, 285 Fed. 853, 860.

## IV

### The Circuit Court of Appeals Erred in Modifying Paragraph Seventh of the Commission's Order

Paragraph seven of the Commission's order directed the respondents to cease and desist from (R. 79):

> (7) Advertising or representing any person as a contributor to or editor of any set of books or publications who has not performed services in making or preparing contributions to or who has not performed services in the editing of such books or publication and consented that he may be held out to the public as a contributor or as an editor or assistant editor.

The court below affirmed this order generally, but modified it so as to exclude contributors to Aiton's Encyclopedia.[51]

The original predecessor of the Standard Reference Work and Standard Encyclopedia, published by respondents, was Aiton's Encyclopedia, published between 1909 and 1912 (Fdg. 6, R. 67). The name of this publication was changed to Standard Reference Work in 1912 and to New Standard Encyclopedia in 1929. The respondent Stanford testified that the reference work was "revised rather thoroughly every two or three years" (R. 387). The changes in size and substance of the

[51] The court also modified this clause of the order so as to exclude Ward and Greener from its operations. This question is considered at pages 64 to 75, *supra*.

work were described by Mr. Stanford as follows (R. 388):

> Aiton's Encyclopedia appeared first in five volumes. The Standard Reference Work appeared first in six volumes. The material in those was increased from time to time with additions, and the number of volumes increased up to the present number ten.
>
> * * * * *
>
> In 1923 it appeared first in ten volumes, but two of those volumes were special teacher material. Last year the special teacher material was dropped from the set and the alphabetically arranged encyclopedia material was extended to fill ten volumes.

At the beginning of the reference work and prospectus (1926 and 1927 editions) was a list of authors, editors, contributors, and reviewers (Exs. 83, 141).[52] This list contained the names of persons who had contributed to Aiton's original encyclo-

[52] This list was omitted from the New Standard Encyclopedia (1930 edition) (R. 434), and replaced by a statement of authorship (Resp. Ex. 4). The latter statement declares that "The new Standard Encyclopedia has been compiled by the editorial staff of the Standard Education Society, numbering among its members men of note in encyclopedic compilation for more than a quarter of a century." Stanford admitted on cross-examination that the "men of note in encyclopedic compilation for more than a quarter of a century" were all contributors to the early editions alone, and that, apart from himself, none had written any articles for the New Standard Encyclopedia (R. 446–451).

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pedia, but who had made no contribution to respondents' work after Aiton's publication was discontinued under that name in 1912 [53] (R. 260–266). As a consequence of the number of revisions and alterations between 1912 and 1929 it seems clear (1) that some of the material originally in Aiton's Encyclopedia remained in the new editions of the revised work, and (2) that some of it was completely eliminated.

The Commission's order did not prevent respondents from advertising that writers of material falling in the first of the above two classes were contributors to the later publication. If what contributors to Aiton's Encyclopedia wrote was taken over (even though revised to a certain extent), such persons *were* contributors to the later editions and representations as to them did not violate the Commission's order.

But conversely, if persons had contributed to Aiton's Encyclopedia but their work has been dropped completely in the subsequent revisions, the representation that they were contributors to the latter was false.

We submit, therefore, that the modification by the court below of paragraph seven of the Commission's order was (1) unnecessary, if its purpose was to permit use of the names of contributors

[53] The Record does not show whether these writers' work was carried over, but a fair inference at least in one case is that it was not. See the testimony of Professor West (R. 265).

to Aiton's Encyclopedia whose work was taken over, and (2) unjustifiable, if its purpose and effect was to permit false representations to be made as to contributors whose work had been entirely eliminated. In either view, the decree of the court below modifying the order of the Commission should be reversed and the original order affirmed.

## V

### The Court Below Erred in Reversing the Eighth Clause of the Commission's Order

Paragraph eight of the Commission's order directed the respondents to cease and desist from (R. 79):

> (8) Advertising or representing that any person has given testimonials or recommendations for and concerning respondents' publications, when such is not the fact.

The court below reversed this provision of the order because it could "find no support in the evidence" for it (R. 490–491).

The testimony as to the use of false testimonials or recommendations falls into four classes:

(a) There was evidence that respondents' salesmen often stated to customers that the reference work had been recommended or approved or purchased by other persons in the vicinity, when such was not the case (R. 133, 188, 198, 269, 277, 372–373, 97–98; Ex. 44).

(b) There was evidence that respondents had transformed testimonials given for earlier editions of the Standard Reference Work into testimonials

for the New Standard Encyclopedia without the authorization of the persons giving the testimonials (Fdg. 15, R. 73–74; compare the testimonials in Resp. Ex. 2 with those in Resp. Ex. 6). The respondent Stanford admitted that this had been done (R. 466–467). Inasmuch as the work was "thoroughly revised" every two or three years (R. 387–388), persons who approved the earlier editions of the Standard Reference Work could not truthfully be said to have approved a newer encyclopedia, under a different name, which they had not seen.

(c) There was evidence that respondents used testimonials for the later publication which had been given only for Aiton's Encyclopedia in 1911 or older editions of the Standard Reference Work (R. 218–220), and that respondents had combined passages from an old testimonial with additional language written by themselves, put the whole on what purported to be the genuine letterhead of the person giving the testimonial, and forged his signature (R. 220–221; Exs. 56, 56A, 60, 61).

(d) Finally, there was the evidence of the witness referred to by the court below, Miss Grace Nixon, secretary to the present State librarian of Indiana, and secretary to the former librarian, Mr. Demarchus C. Brown, before his death. On the sales blanks distributed by respondents was a testimonial purporting to come from Mr. Brown (*e. g.*, Exs. 11, 78). From the evidence of Miss

Nixon,[54] the Commission could have inferred either that the testimonial was genuine or that it was a fabrication. When conflicting inferences can be drawn from evidence, the Commission is entitled to decide which inference is the most credible. The testimony adduced as to the admitted fabrication of another testimonial (R. 220; see page 80, *supra*) indicates that it was not unreasonable to infer from Miss Nixon's testimony that the letter was a fabrication.

On the basis of *all* of the evidence reviewed above, and not merely the testimony of Miss Nixon, the Commission found that—

---

[54] Miss Nixon testified that a salesman had left a copy of the Standard Reference Work with Mr. Brown; that Mr. Brown examined it and "decided he did not want it, and returned it;" that it was Mr. Brown's "very strict policy" never to recommend works for publishers; that she, as Mr. Brown's secretary, had never written a letter recommending respondent's publication; and that at one time she and Mr. Brown had searched through his files to discover if such a letter had been written, and were able to find none (R. 235–239).

Counsel for respondents then introduced in evidence a letter (Resp. Ex. 1), on the letterhead of the Indiana State Library, purporting to be written by hand by Mr. Brown, and asked the witness if the handwriting was that of Mr. Brown (R. 237–238). The witness admitted that it looked like Mr. Brown's writing, but stated that she "would not swear" it was his writing. The final question and answer in the colloquy on this point was as follows:

> Q. It would be your best judgment that it probably was his writing?
>
> A. No; I would not say that. I say it looks like Mr. Brown's writing.

> Many of these alleged testimonials are garbled, unauthorized, and have been made, when made at all, to cover a previous work, Aiton's Encyclopedia, which was a work quite different in form, in material, and in purpose from the Standard Reference Work. These same testimonials have been used year after year from 1912 to 1930 as expressions of opinion of eminent men as to the Standard Reference Work. [Fdg. 14, R. 72–73.]

The Commission further found that—

> None of these men or this woman ever wrote any testimonial or recommendation of or concerning the New Standard Encyclopedia. The representations that these men and this woman wrote the recommendations for the so-called "New Standard Encyclopedia" are false, deceptive, and misleading. [Fdg. 15, R. 74.]

The court below came to the conclusion that the testimony of Miss Nixon was "outweighed" by her identification of Mr. Brown's handwriting (R. 491). In weighing this evidence, it clearly went beyond its proper function. And in ignoring the other evidence adduced, the court refused to follow the mandate of the statute that the findings of the Commission "if supported by testimony, shall be conclusive." Federal Trade Commission Act, Sec. 5; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73.

## CONCLUSION

It is respectfully submitted that the judgment of the court below, to the extent that it modifies the order of the Federal Trade Commission, should be reversed, and the order of the Commission affirmed.

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*Federal Trade Commission.*

SEPTEMBER, 1937.

## APPENDIX

Section 5 of the Federal Trade Commission Act (Act of September 26, 1914, c. 311, 38 Stat. 717, 719, U. S. C., Title 15, Sec. 45) is as follows:

> That unfair methods of competition in commerce are hereby declared unlawful.
>
> *Power to prohibit.*—The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.
>
> *Procedure by commission.*—Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may

be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

*Enforcement of orders.*—If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the pro-

ceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

*Application to set aside order.*—Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and

thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

*Jurisdiction of court.*—The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

* * * * *

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1936.

No. [redacted] 14

FEDERAL TRADE COMMISSION, PETITIONER

v.

STANDARD EDUCATION SOCIETY ET AL.

*On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.*

## BRIEF FOR THE RESPONDENTS IN OPPOSITION.

HENRY WARD BEER,
*Counsel for Respondents.*

THE COURT PRESS, N. Y. C.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1936.

No. 825.

FEDERAL TRADE COMMISSION, PETITIONER

v.

STANDARD EDUCATION SOCIETY ET AL.

*On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.*

## BRIEF FOR THE RESPONDENTS IN OPPOSITION.

### OPINION BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit is reported in 86 F. (2d) 692 and in the record at 486.

### JURISDICTION

The Judgment of the Circuit Court of Appeals for the Second Circuit was entered December 21, 1936 (R. 493). Petition for certiorari was filed March 19, 1937. The jurisdiction of the court is invoked under Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), and under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 347 (a)).

### QUESTION PRESENTED

The petition herein formally presents (p. 2) but one question to this court. That question is, in the

opinion of respondents, improperly stated and should be rephrased accurately to express the opinion of the court below which the Solicitor General now seeks to have this court review. Accordingly, to be correctly stated it should read as follows:

Does the sales practice of representing to prospective purchasers of ten volume sets of encyclopedias with loose leaf quarter-annual supplements for a ten year period which gives the buyer ten additional volumes, that they are to receive the encyclopedias free and pay only for the loose leaf quarter-annual supplements, constitute an unfair method of competition in commerce within the meaning of Section 5 of the Federal Trade Commission Act?

The court below did not hold that such representations were false. The petitioner is wholly without warrant to assume what it must prove. Overruling the Commission, the lower court unanimously stated:

> "We cannot take seriously the suggestion that a man who is buying a set of books and a ten years' 'extension service', will be fatuous enough to be misled by the *mere statement* that the first are given away, and that he is paying only for the second. Nor can we conceive how he could be damaged were he to suppose that that was true. Such trivial niceties are too impalpable for practical affairs, they are will-o'-the-wisps, which divert attention from substantial evils" (R. 489). (Italics supplied.)

## STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act approved September 26, 1914, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45) is printed in the Appendix, *infra,* pp. 15-18.

## STATEMENT

The original and supplemental complaints herein (R. 2, 20) concerned eight alleged unfair methods and in the cease and desist order entered against respondents (R. 78) there are ten paragraphs covering these eight separately alleged unfair methods of competition. However, despite the fact that petitioner has presented to this Court as the sole question involved, only one of the separately alleged unfair methods of competition which the court below held, as a matter of law, was not an unfair method of competition, the petitioner has in its statement developed all the facts as to all of the methods that were in the case whether relevant or irrelevant to the lone question it has presented.

Respondents submit that Supreme Court Rule 27 in so far as the statement of the case is concerned has been completely disregarded by the Solicitor General. Petitioner should not burden the court with facts and supposed errors which are not material to the specific question the Solicitor General has chosen to present to this Honorable Court.

The facts material to the particular question can thus be summarized. The respondent corporations, Standard Education Society and Standard Encyclopedia Corporation, are engaged in the compilation, production and sale of ten volume sets of encyclopedias, sold together with a ten year loose leaf extension service consisting of quarter-annual supplements which at the end of ten years comprises ten additional volumes of encyclopedic material, thus making a total of twenty volumes (R. 8, 27). Respondent, H. M. Stanford is president, director, general manager, and a stockholder of respondent Standard Education Society (R. 2, 12, 379, 382, 412, 429). Respondent, W. H. Ward is vice-president, director and a stockholder of

Standard Education Society (R. 30, 383, 424) and respondent A. J. Greener is the auditor, cashier and a stockholder of Standard Education Society (R. 467). Greener was a mere employee and not a director (R. 436, 437, 467).

The Federal Trade Commission in its original and supplemental complaints alleged, *inter alia,* that respondents represent to prospective purchasers of the ten volume sets of encyclopedias together with the loose leaf quarter-annual supplements for ten years, that the encyclopedias are being given away and that the purchasers are paying only for the ten year loose leaf quarter-annual supplement service. The Commission says these representations are false and misleading because the books are not given away, the price asked being the regular price of the encyclopedia with the loose leaf service. On the basis thereof, the Commission issued an order which in so far as is here pertinent directed the respondents to cease and desist from:

> "(1) Advertising or representing in any manner to purchasers or prospective purchasers that any books or set of books offered for sale and sold by them will be given free of cost to said purchasers or prospective purchasers, when such is not the fact."
>
> "(3) Advertising or representing in any manner that purchasers or prospective purchasers of respondents' publications are only buying or paying for loose-leaf supplements intended to keep the set of books up-to-date for a period of ten years, when such is not the fact."

The order was issued December 24, 1931. Nothing was done to enforce this order until January 20, 1936, when the Commission filed with the Circuit

Court of Appeals for the Second Circuit its application for the enforcement of the aforesaid order in all its particulars. Respondents properly answered and the case was argued. On December 14, 1936, the court below handed down its opinion striking from the order the paragraphs above set forth which it ruled did not, as a matter of law, amount to an unfair method of competition (R. 486, 493). It also eliminated paragraph 8 of the order because there was no evidence at all to support that paragraph. The court affirmed in full most of the other parts of the order and modified a few in part. However, as to the parts affirmed, the court below, before decreeing enforcement of the desist order, remanded the cause to the Commission as Special Master to report whether the respondents have complied with the sustained provisions, in accordance with Section 5 of the F. T. C. Act and its long settled and undisturbed procedure (*F. T. C.* v. *Paul Balme* (C. C. A. 2, 1928), 23 F. (2d) 615, cert. den. 277 U. S. 598). The court directed that: "The cause will await in this court the return of that report for further proceedings" (R. 492, 495). Consequently, the decision of the court for the most part is interlocutory. It is final only as to the specific question presented at this time and as to some minor and inconsequential details which are unsupported, in the opinion of the court below, by any evidence.

### PETITIONER'S SPECIFICATION OF ERRORS

Although petitioner on page 11 of its petition herein, sets forth ten alleged errors of the court below, only one of them (number one) refers to the question formally presented to the court. The others should be disregarded for this Court has refused to consider any errors not involved in the question presented to

it in the petition. In *Helvering* v. *Taylor,* 293 U. S. 507, 511, the court said:

> "The only question for consideration is that stated in the petition for certiorari."

Furthermore, "Errors" 2 to 10 are not of a character to justify any attention from the court. Thus, "Errors" numbered 2 to 5 concern rulings by the court below on questions of fact which do not warrant review of this case and which will not be disturbed by this Court in any event. "Errors" numbered 6 to 8 refer to a question of practice and procedure, settled by the court below in *F. T. C.* v. *Paul Balme* (C. C. A. 2, 1928), 23 F. (2d) 615, cert. den. 277 U. S. 598, and followed and applied in *F. T. C.* v. *Baltimore Paint and Color Works* (C. C. A. 4, 1930), 41 F. (2d) 474, 476. The last two alleged errors (numbers 9 and 10), are mere formal conclusions based on the preceding errors.

## ARGUMENT

### I.

### No substantial question of law is involved herein.

The Solicitor General in his Argument has ingeniously assumed that the court below decided that respondents made false representations in their sales talks, but held that even if they did make false representations, such false representations do not amount to an unfair method of competition. The court below did not so decide. Its plain and direct decision is entirely inconsistent with any such interpretation. It was not predicated upon the premise that respondents made false representations in their sales talks.

As a matter of fact, the question presented to this Honorable Court by petitioner is, in the unanimous opinion of the court below, a "trivial" nicety and a "will-o'-the-wisp" rather than a substantial question of law. The practice involved bears no indicia of fraud or deceit, is not *contra bonos mores* and could not possibly mislead or damage a purchaser. It is an innocuous sales approach and merely enables a salesman to gain an audience more readily by offering one part of a combination "free" on condition that the purchaser pay for the other part. A community which sells for profit must give a trader some leeway in the sale of his wares so long as his methods are not fraudulent, deceptive or immoral.

Is it unfair for a trader to offer a toothbrush "absolutely free" with every purchase of a tube of toothpaste? The cost of the brush is, of course, absorbed in the price requested for the paste. Yet where is the deception or damage? Is it unfair for a book club to advertise that a book will be given free upon joining the club? These examples may be multiplied a thousand fold. This type of advertising appears regularly in all current magazines, in our leading daily and Sunday newspapers and is inserted by hundreds of our foremost manufacturers and merchants. The Court should take judicial notice of these advertising methods. Such sales inducing practices, acquiesced in and established from a time "when the memory of man runneth not to the contrary", do not deceive or damage prospective purchasers and should not be the concern of this Court.

The respondents for over twenty-five years have developed a fine ten volume encyclopedia which itself undergoes revision every other year and is continually kept up-to-date by means of a quarter-annual supplement. These supplements, by keeping the in-

formation under the subject headings of the encyclopedia, add to the encyclopedic matter as outstanding events in world affairs occur. The buyer wants up-to-date information under the encyclopedic headings treated in the ten volumes. He does not want the ten volumes without the quarterly service. These two items, the ten volumes and the quarterly supplement, are sold together and are inseparable. When the ten years of quarterly supplements have been furnished, the buyer then has twenty volumes of encyclopedic information, each year's quarterly being the size of one of the ten original volumes.

The respondents' salesmen said to prospective purchasers: "We offer the books 'free' if you buy the quarter-annual supplements which come to you over a period of ten years." At once, the buyer, examining the sample of the quarterly supplement and a volume of the encyclopedia, notes the unmistakable fact that the "free offer" cannot be divided into parts. Because, the word "free" if left by itself does not contain the substantive idea embodied in the proposed contract. It is "free" only on condition, for the word "free" standing alone does not make sense. The supplement and the ten volumes go together, like cream served with coffee. There is no quality of falsity in the salesmen's offer. The whole picture is clear. The buyer knows what he is getting and how much he is paying. He knows that he is not getting something for nothing, for he is told he must pay a substantial amount to get that which is described as "free". That is why Judge Learned Hand writing the opinion for the court below rightfully said that the Federal Trade Commission in examining sales efforts should not "bring a pedantic scrupulosity" to its tasks and that "too solicitous a censorship is worse than any evils it may correct" (R. 489).

The Court is now asked to consider and review what the lower court considered "will-o'-the-wisps" (R. 489), rather than a serious unfair method of competition substantially affecting commerce.

The question here presented to the Court is highly inconsequential and merits no review. This is not a case of misleading the public such as the case of selling cotton for wool (*F. T. C.* v. *Winsted Hosiery,* 258 U. S. 483, 493, 494), nor a case where children are cheated and the gambling spirit instilled (*F. T. C.* v. *Keppel,* 291 U. S. 304). Here we have simply the question of a purchaser seeking to buy an encyclopedia with loose leaf quarter-annual supplements for a ten year period, who obtains exactly what he wants for a price he evidently believes to be reasonable, and for which he signs a written contract. No one is or can be misled or damaged by the salesman's mere statement that the purchaser is paying the price for only one of the inseparable items he desires.

The court below, when it examined the record, found no credible evidence to the effect that any one had been misled or damaged by the statements that the encyclopedia was being given away and that only the supplements were being paid for. Petitioner's record citations on page 13 of its petition do not support a contrary contention. Not one of the instances cited proves that a purchaser was misled or damaged. The citations merely establish what is not contested, viz., that the "free goods on condition" representations were made, a far cry indeed from deceit and damage.

The decision of the court below does not rest upon the fancied ground stated by the Solicitor General (Petition, p. 13), *i. e.,* that if misrepresentations are so obviously false that the court believes a man would be fatuous to believe them, they do not amount to an unfair method of competition. It is highly unjust

for petitioner to assume that the lower court applied a hitherto unheard of rule of law. What the court below clearly did hold was that in its opinion no one could be misled by the mere statements of the respondents, and that in any event no one could possibly be damaged by the practice involved, and therefore no violation of Section 5 of the F. T. C. Act existed. In other words in the court's opinion, the practice involved no falsity, no misrepresentation, no deceit and above all, no possible damage to the purchaser.

And, if there is no deception or damage, why should the practices be deemed an unfair method of competition in commerce and within the jurisdiction of the Federal Trade Commission! Truly, such practices are of the kind *de minimis non curat lex,* and, as the lower court stated, "too impalpable for practical affairs", merely serving to divert the Commission's attentions from substantial evils that restrain trade or tend to create a monopoly in interstate commerce.

## II.

### There is no genuine conflict of decisions.

There is no real conflict between the instant decision and the decision of any other Circuit Court of Appeals on the question presented. "Free goods on condition" sales advertising has never been condemned, when standing alone, by any court as an unfair method of competition.

While the case of *Consolidated Book Publishers, Inc.* v. *F. T. C.* (C. C. A. 7), 58 F. (2d) 942, cert. den. 286 U. S. 553, had in it a "give away" talk, the court in that case did not attempt to analyze this separately alleged unfair method of competition. It

looked rather at the other and more serious practices involved in that case and affirmed the entire order. The *Consolidated* case, as the court below said, *"was complicated by a number of graver practices which probably colored the whole"* (R. 489).

In the instant case, the court decided to and did take up each paragraph of the order independently so as to determine whether the methods forbidden by the Commission were, as a matter of law, unfair methods of competition. This is the recognized duty of the Circuit Court of Appeals in dealing with Commission desist orders.

*F. T. C.* v. *Gratz, et al.*, 253 U. S. 421;
*F. T. C.* v. *Curtis Publ. Co.*, 260 U. S. 568.

The paragraphs of the desist order which the court believed were supported by evidence and constituted unfair methods of competition in commerce, it affirmed. Paragraphs 1 and 3, dealing with the question here presented, *i. e.*, "free goods on condition" sales advertising, did not in the court's opinion amount to an unfair method of competition and it therefore struck these two paragraphs from the Commission's desist order. Hence, the case at bar and the case of *John C. Winston Co.* v. *F. T. C.* (C. C. A. 3), 3 F. (2d) 961, cert. den. 269 U. S. 555, with which the instant case is in complete harmony, are the only decisions wherein the question here presented was ever considered by itself to determine whether it was an unfair method of competition. In both cases the courts concluded that the practice was not an unfair method of competition.

The reasoning of the court below in this regard is clear and logical and is not in conflict with any other decision, for no decision exists where the question involved was condemned when considered by itself,

as did the court below and as this Court is now asked to do.

A great portion of the argument and the briefs, in the court below, was devoted by both sides to comparing the *Consolidated* case with the facts in the instant case. After most careful consideration, the court held that it did not believe that the court in the *Consolidated* case would have held the "bare practice" (i. e., the question here presented) bad if that case were stripped of its graver practices (R. 489). Respondents submit that there is no genuine conflict of decisions on the "bare practice" which petitioner has presented to this Court for consideration.

## III.

### Petitioner's alleged "errors" 2-10, are immaterial.

Respondents have not presented any argument upon petitioner's alleged errors which do not relate to the sole question here presented, because respondents do not believe that the errors, listed on page 11 of the petition and numbered two to ten, are properly before the court. Furthermore, these alleged errors relate merely to facts and an unimportant matter of procedure which this Court will not disturb. Evidently that was why petitioner did not embody these alleged errors into a question for the court to decide, but merely urged them to color the case and omitted to support their specification by any argument.

## IV.

### Decision should not be disturbed.

Respondents do not believe that the unanimous opinion of the court below forbidding "a pedantic

scrupulosity" on the part of one of our government's subordinate agencies in its policing of business, should be disturbed.

### CONCLUSION

The decision of the court below on the question presented is correct. No genuine conflict of decisions exists. The question presented involves no issue of substance or of sufficient general importance worthy of review by this Court. The petition should therefore be denied.

Respectfully submitted,

HENRY WARD BEER,
*Counsel for Respondents.*

April, 1937.

# APPENDIX

Section 5 of the Federal Trade Commission Act (Act of September 26, 1914, c. 311, 38 Stat. 717, 719, U. S. C., Title 15, Sec. 45) is as follows:

That unfair methods of competition in commerce are hereby declared unlawful.

*Power to prohibit.*—The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

*Procedure by commission.*—Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced

to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

*Enforcement of orders.*—If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting

aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

*Application to set aside order.*—Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an

application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

*Jurisdiction of court.*—The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

* * * * *

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1937.

**No. 14.**

FEDERAL TRADE COMMISSION,

*Petitioner,*

v.

STANDARD EDUCATION SOCIETY *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

## BRIEF FOR RESPONDENTS.

HENRY WARD BEER,
*Counsel for Respondents.*

THE COURT PRESS, N. Y. C.

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## *BRIEF FOR RESPONDENTS.*

### *Opinion Below.*

The opinion of the Circuit Court of Appeals (R. 486-492) is reported in 86 F. (2d) 692.

### *Jurisdiction.*

The jurisdiction of this Court is invoked under Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), and under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

***Criticism of Questions Presented.***

The questions presented must be directed to the opinion of the court below. Because this was not done in the Petition for the Writ of Certiorari, we took exception in our brief opposing the Petition, to Petitioner's statement of the one question there presented. On page 2 of its Petition, the Federal Trade Commission had asserted the following as its question to the Court:

> "Are false representations to prospective purchasers of sets of books that they were to receive the books free and pay only for loose-leaf annual supplements so obviously false that they do not amount to an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act?"

In our reply to the Petition, we pointed out that such an issue had not been decided by the Circuit Court of Appeals for the Second Circuit, and therefore the question was improperly stated. The unanimous lower court did not hold that the representations in question were false, and did not state the rule of law embodied in the "question presented".

Finding entire absence of any possible injury to the public in respondents' retail combination sales method of offering to give free, an encyclopedia of ten volumes on condition that the purchaser buy the quarterly supplement for ten years, making ten additional volumes or twenty volumes in all, the court below could not find that any falsity existed in such method of respondents.

What the Court of Appeals, speaking through Judge Learned Hand, said was:

> "We cannot take seriously the suggestion that a man who is buying a set of books and a ten years 'extension service', will be fatuous enough to be misled by the *mere statement* that the first are given away, and that he is paying only for the second. Nor can we conceive how he could be damaged were he to suppose that that was true. Such trivial niceties are too *impalpable* for practical affairs, they are will-o'-the-wisps, which divert attention from substantial evils" (R. 489). [Italics supplied.]

Taking notice of our pointed exception to the misinterpretation of the opinion found in the question, and conceding in part the truth of our criticism, the petitioner has now in its present brief, rewritten the question in issue as follows:

> "Are false representations to prospective purchasers of a ten volume reference work and a loose-leaf extension service that the reference work is free and that only the extension service is to be paid for an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act?" (Pet.'s Br., p. 1.)

Despite the revision, it is clear that the vice inherent in the original question presented persists in the revised question above quoted, because petitioner still insists that the lower court has licensed respondents to use false and fraudulent representations. The court below did not hold that the representation was false. To the contrary, in the court's opinion, the practice involved no falsity, no misrepresentation, no deceit and above all, no possible damage to the purchaser. To the lower court, the problem presented was thought too trivial a nicety to concern the Federal

Trade Commission, a statutory body designed by Congress to stamp out substantial evils. A trivial nicety and "will-o'-the-wisp", the question remains, despite the facts that certiorari was granted and that petitioner attempts to justify it as a serious problem.

It is submitted that had petitioner's Question 1, conformed accurately to the decision of the court below, certiorari would not have been granted. The question fairly stated should read thus:

> "Does the sales practice of representing to prospective purchasers of 10 volume sets of encyclopedias with loose-leaf quarter-annual supplements for a ten year period which gives the buyer 10 additional volumes, or 20 volumes in all, that they are to receive the encyclopedias free on condition that they pay for the loose-leaf supplements, constitute an unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act?"

Questions 2 to 4 (Pet.'s Br., p. 2) were assigned as errors in the Petition and were not, and by reason of their unimportance, could not be the basis for the Petition for the Writ of Certiorari. In our humble opinion, they are here merely to allow petitioner an opportunity to color the real issue sought to be presented by Question 1, by an unnecessary rehashing of the entire case which, for the most part, was decided in the Commission's favor.

We wish to point out, however, that even in the statement of one of these minor questions, Question 3, the decision of the Circuit Court of Appeals has been misconceived. Petitioner's Question 3 assumes that there is proof, in the record, that the contribu-

tions of some of the contributors to Aiton's Encyclopedia, the derivative work, were entirely omitted from the current derived work. There is absolutely no evidence and no finding that all the contributions of any one of the contributors to Aiton's Encyclopedia were omitted from the current encyclopedia. Judge Hand in his opinion wrote:

> "There were, however, a number who had been genuine contributors to 'Aiton's Encyclopedia', but who had done nothing later. How much of this earlier work went into the two later ones cannot be definitely ascertained, but it was the basis of them, and it seems to us not 'unfair' to announce as contributors to the derived work those who had been contributors to the original. This clause, ought therefore, to be modified or clarified by excepting from the prohibition contributors to 'Aiton's Encyclopedia'" (R. 490).

Question 3, to accord with the decision of the court below and with the record, should therefore be stated thus:

> "3. Should the seventh paragraph of the Commission's order have been modified so as to permit respondents to make representations that contributors of Aiton's Encyclopedia, the original and basic work, were contributors to the current Standard Encyclopedia, the derived work?"

As modified above, Questions 1 to 4 properly present the issues to the Court.

### *Statute Involved.*

Section 5 of the Federal Trade Commission Act, approved September 26, 1914, c. 311; 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45).

## *Statement.*

Because the issues involved in the instant case concern only a small portion of the statement made by petitioner, we deem it proper to give the Court a short resumé of the relevant facts, and of the action of the Circuit Court of Appeals for the Second Circuit, which is now under review.

It is well to comprehend that we are examining the business of corporate respondents that are firmly rooted in American business with many years of useful and practical achievement in the long, time honored business of placing into the homes of the American public 20 fine volumes of up-to-date encyclopedic material. The material is so practically presented and arranged that those among us of high school intelligence may quickly find in non-technical and simplified form, matters of world-wide knowledge and the current record of history in the making.

The Government does not challenge these facts or deny the great public good the corporate respondents have accomplished during the past 25 years of their business life during which time they have distributed over a hundred thousand sets of encyclopedias to the intelligent reading public.

The record established that in 1909, there was incorporated in Minnesota, under the name of Wells Brothers Publishing Company, a corporation which published an encyclopedia known as "Aiton's Encyclopedia", prepared by Professor George B. Aiton, then of the University of Minnesota faculty. The work was originally in 5 volumes (R. 388). In 1912, the name of the publication was changed to "Standard Reference Work" and it continued to be published and sold by the Wells Brothers Publishing Company.

In 1917, the corporate name of the Publishing Company was changed to the "Standard Education Society" (R. 379, 380).

About the year 1923, the encyclopedia was practically rewritten. It was then in ten volumes, two of which were exclusively devoted to matters especially for teachers (R. 388). At the same time, the Society began the preparation and distribution of looseleaf extensions, which were then issued semi-annually (later changed to quarter-annually) so that the encyclopedic material would be kept up-to-date. The books were again revised in 1925 and 1927. In 1929, the special teacher material was dropped from the set and the alphabetically arranged encyclopedic material was extended to fill ten volumes (R. 388). The publication is recopyrighted at least every two years as material changes are made (R. 387).

In 1929, after eliminating the two volumes of teacher material and expanding and enlarging the scope of the books to include strictly encyclopedic matter, it seemed appropriate to call the work an encyclopedia, and the name of the "New Standard Encyclopedia" was chosen. It was intended that the name of the corporation would be changed as had been done in 1917, but because of banking arrangements, this was impossible at the time. A new corporation, "not for profit" was therefore incorporated, bearing the name of "Standard Encyclopedia Corporation", under the Illinois eleemosynary corporation law.[1]

[1] That this non-stock, "not for profit" corporation was organized to evade any order that might be issued against the Standard Education Society was the baseless and imaginary inference drawn by the Commission in its findings. And, this inference is relied on by petitioner in its present brief in arguing that the organizers of the new corporation, including the bookkeeper of the Standard Education Society, were properly included in the "desist order". We shall deal with this untenable argument *infra*, under Point II in answering petitioner's Point III.

The Standard Encyclopedia Corporation was and is nothing more than a trade department of the Standard Education Society which remained the financial entity, handled all the sales, collected all the accounts and did everything else. Fundamentally, there was only one corporation (R. 404, 405).

The encyclopedias are sold largely on the installment plan by salesmen who call directly upon the purchasers, and as many as 500 different travelling solicitors are employed in a year.

Since the establishment of this large retail book business, it has met with encouragement and success. Its business does not in the nature of things, lend itself to obtaining customers by fraud because it has the customers for ten long years and must please them to win friends and make further sales. If, at the threshold, it deceives its customers that would end instead of begin ten years of steady business relationship.

Among its various activities, the respondent Standard Education Society has also conducted since 1924 a correspondence secretarial school, furnishing home study courses of instruction.

The individual respondents are H. M. Stanford, the president, a director, general manager and owner of 250½ out of Standard Education Society's 536 shares; W. H. Ward, the secretary, director, in charge of sales, and also the owner of 250½ out of Standard Education Society's 536 shares; and A. J. Greener, employed by Standard Education Society, as the company's auditor and cashier and who owns the remaining 35 shares of stock. Greener is a mere employee and not a director (R. 426, 427, 467).

The Commission's "cease and desist" order is directed against the two corporate and 3 individual

respondents and was issued after testimony had been taken and findings of fact made. The order comprised ten paragraphs and proscribed the nine alleged unfair methods of competition charged in the Commission's original and supplemental complaints.[2]

Briefly stated, the first and third paragraphs forbade representing the ten volume encyclopedias as given free and only the looseleaf quarter-annual supplements as paid for; the second forbade representing that some of the sets were delivered to selected persons; the fourth forbade representing the work as "a recently completed new and up-to-date encyclopedia"; the fifth, offering the same work under two names; the sixth, representing its usual price as higher than that at which it was offered; the seventh, representing any person as a contributor who was not a contributor; the eighth, representing any person as giving a testimonial who had not done so; the ninth, publishing other testimonials than those actually given; the tenth, representing the home study course of instruction as a "Special Introductory Enrollment" at a special reduced price.

The order was issued December 24, 1931. Nothing was done to enforce this order until January 20, 1936 when the Commission filed with the Circuit Court of Appeals for the Second Circuit its application for the enforcement of the aforesaid order in all its particulars. Respondents properly answered and the case was argued. On December 14, 1936 the court below, per Circuit Judge Learned Hand, rendered their unanimous opinion, affirming most of the paragraphs of the desist order. The court, however, re-

[2] Paragraphs 1 and 3 were treated by the court below as similar and were considered together as one practice.

versed Paragraphs 1 and 3 of the order relating to the first of the forbidden methods of competition on the ground that as a matter of law no unfair method of competition was involved. The eighth paragraph was eliminated from the order because the court could find for it "no support in the evidence" (R. 491). The seventh paragraph was modified in an unessential detail by exempting from its prohibition contributors to "Aiton's Encyclopedia", the original and basic work (R. 490). The court held that Greener being merely an employee and the chief bookkeeper of the Standard Education Society and having no connection with any of the alleged practices, was improperly enjoined by the order and it was completely reversed as to him. Further, since no connection was proved between Ward and the practices enjoined by the seventh, ninth and tenth paragraphs and between Stanford and the practice enjoined by the tenth paragraph, these paragraphs were modified by eliminating the individuals therefrom as indicated. Paragraph 10 was also amended to exclude any reference except as to price because there was no finding of fact to support the other prohibition contained therein (R. 491).[3]

Before decreeing enforcement of the parts of the order which were affirmed, *i. e.*, paragraphs 2, 4, 5, 6, 7, 9 and 10, the court below, in accordance with Section 5 of the Federal Trade Commission Act (c. 311, 38 Stat. 717, 719), and its long settled procedure, remanded the cause to the Commission as Special

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[3] In its Petition for a Writ of Certiorari, the Commission specified as error the modification of Paragraph 10 (Pet.'s Br., p. 11). In its present brief (p. 17), it disclaims any intention to discuss the errors assigned to this paragraph. We may therefore assume that petitioner is content to allow Paragraph 10 to stand as amended by the court below. We likewise will therefore refrain from discussing the said paragraph.

Master to report whether the respondents have complied with the provisions sustained.[4]

Thus, although many of the provisions of the order were affirmed, no final action has as yet been taken thereon by the lower court. Consequently, respondents have not filed in this Court a cross petition. No question can be, or is intended to be, raised by respondents now as to the affirmed provisions of the order. For the purposes of the present appeal initiated by the Commission, all matters decided in its favor are unquestioned by respondents and assumed to be correct. As petitioner itself admits on page 17 of its brief, "To the extent that the Commission's order was affirmed by the court below, it is, of course, not now before the court".

Despite this declaration by petitioner, its brief is replete with references for support to the affirmed portions of the order. It cannot be urged too strongly that only the questions formally presented by petitioner are now before the Court (*Helvering* v.

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[4] *Errors Abandoned by Petitioner.* In the Petition for the Writ of Certiorari, petitioner had assigned as errors, the lower court's adherence to their settled procedure whereby they refuse to determine a disputed issue of compliance with the desist order, before reviewing the validity of the order (Errors 6 and 8, Petition, pp. 11 and 12). The court first determines whether the order is valid and if valid, remands the cause to the fact finding body, the Commission, to sit as Special Master and to report its finding to the court for further action. (See *Federal Trade Commission* v. *Balme* (C. C. A. 2), 23 F. (2) 615, 618). Error was also assigned to the court's refusal to treat respondents' prayer that the desist order be vacated, contained in their joint answer to the Commission's Application for the enforcement of its desist order, as a waiver of their right to insist that non-compliance with the order be proved as a condition precedent to the granting of the Commission's Application [Error 7, Petition, p. 12]. These errors must be deemed to have been abandoned by petitioner since no reference and no argument relative thereto are stated in its present brief. Petitioner now evidently concedes the propriety of these rulings of the Court of Appeals.

*Taylor,* 293 U. S. 507, 511). There is at present no dispute with any other matter and petitioner may not properly reiterate and reargue the forbidden practices of the order, which are not before us and which for present purposes, are conceded to have been correctly affirmed by the court below.[5]

We will, therefore, in the ensuing argument, confine ourselves specifically to the four questions presented by petitioner to this Court.

## *Summary of Argument.*

### *Point One.*

The court below correctly held that it is not an unfair method of competition for a tradesman to offer to give away one thing free on condition that the customer buy something else. Such a sales inducing method is time honored, and is not fraudulent, deceitful or against public policy. *People* v. *Gillson* (1888), 109 N. Y. 389; *Long* v. *State* (1891), 74 Md. 565; *Commonwealth* v. *Emerson* (1895), 165 Mass. 146; *Boon-Iseley Drug Co.* v. *Doughton* (1925), 189 N. C.

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[5] Similarly the collateral issues decided against respondents form no part of the present case. Thus, the court below decided that respondents' practices constitute methods of competition in commerce. This decision cannot now be questioned by respondents and they are at a loss to understand why petitioner devotes an entire point of its Argument, Point II, to prove that the court was correct in deciding in its favor. Therefore, no argument answering petitioner's Point II is contained in this brief.

The court below also held that the corporate respondents are responsible for the acts and conduct of the agents and of the independent dealers. And, although this holding cannot now be questioned by respondents, petitioner devotes pages of its brief (pp. 9, 10 and 24) to reargue this point upon which it had met with complete success below. Presumably, the Commission's only purpose is to include what it considers questionable conduct on the part of the respondents to strengthen its unsecure case before this Court, irrelevancy and immateriality notwithstanding.

720. The whole question is insubstantial, impalpable and as the Court of Appeals believed, a will-o'-the-wisp which diverts attention from substantial evils (R. 489). *Northam Warren Corp.* v. *Federal Trade Commission,* 59 F. (2d) 196; *Flynn & Emrich Co.* v. *Federal Trade Commission,* 52 F. (2d) 836.

There is in the combination, "free on condition" method of retail salesmanship nothing that approximates the unfairness and fraud present in petitioner's cited cases of *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U. S. 483; *Federal Trade Commission* v. *Royal Milling Co.,* 288 U. S. 212; *Federal Trade Commission* v. *Keppel & Bro.,* 291 U. S. 304; *Federal Trade Commission* v. *Algoma Lumber Co.,* 291 U. S. 67.

The "free on condition" representation is true. The purchaser is told just what he is to get and how much he is to pay. There is no distinction between the free offers petitioner concedes to be legitimate and the offers involved in the instant case. Indeed, the Commission's recent complaint, *"In the Matter of Askins Retail Stores Inc.,"* Docket 3225, in effect, belies petitioner's concession, for there, the Commission has charged, as the sole unfair method of competition, the use of that which petitioner describes as a "legitimate" free offer. Respondents' customers and especially the Commission's six star witnesses whose testimony is quoted in petitioner's brief (pp. 31-35), were not deceived.

Since no fraud is present in the method here concerned, familiar fraud principles and cases, cited by petitioner, are wholly inapplicable. Fraud cannot be presumed and cannot be forced into this case by the reiteration of cases which relate to deliberate fraud.

The case of *John C. Winston* v. *Federal Trade Commission,* 3 F. (2d) 961, is in all respects similar to the case at bar and was explicitly followed by the court below. Both, the court below and the Third Circuit Court of Appeals in the *Winston* case, properly considered the free on condition method independently and by itself. Both courts found the method not unfair. *Consolidated Book Publishers* v. *Federal Trade Commission,* 53 F. (2d) 942, is not in point. There, the "bare practice" questioned in the instant case was not considered separately.

***Point Two.***

The court below committed no error in excluding respondent Ward from the seventh and ninth paragraphs of the order since they could find no evidence connecting him with the practices there prohibited. The cases cited by petitioner, such as *McCandless* v. *Furland,* 296 U. S. 140, are clearly not controlling, for the business of the corporate respondents is an old established one, having been in existence for more than 25 years. During the five years (1924-1929) covered by the complaints, the Standard Education Society was not under the control of Stanford and Ward. There were, during that time, numerous stockholders and various directors and officers.

Greener was a mere employee and his exclusion from the order was proper. That he was an incorporator of Standard Encyclopedia Corporation is of no moment. The incorporation of the Standard Encyclopedia Corporation afforded no reason for Commission's fears that it was a device to evade an order that might be issued against the Standard Education

Society. As a matter of fact, the corporation was formed for a lawful purpose on behalf of the Standard Education Society, and as a matter of law, evasion was impossible. *Federal Trade Commission* v. *Hoboken White Lead and Color Works, Inc.*, 67 F. (2d) 551.

The Commission's Finding 20 is not based on any evidence. It cannot be supported solely by an inference from testimony contradicting the finding. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67; *Federal Trade Commission* v. *Pacific States Paper Trade Assn.*, 273 U. S. 52.

***Point Three.***

The court's modification of paragraph seventh of the desist order, so as to exclude therefrom contributors to Aiton's Encyclopedia, was reasonable and necessary. There is no evidence in the record that all the contributions of any one contributor to Aiton's Encyclopedia, the basic work, was omitted from respondents' current publications, the derived works. Although petitioner now states that it is concerned only with contributors to Aiton's whose work was not carried over, the Commission in the court below urged that all contributors to Aiton's were improperly represented as contributors to the present works. It is obvious therefore that petitioner has no real grievance as to the modification of this paragraph of the order.

***Point Four.***

There was no evidence to support paragraph eighth of the order which forbade the representation that any person had recommended respondents' publication

when such was not the fact. The court is not bound to regard legally inadmissible evidence as supporting a desist order. An order to be binding must be supported by legally admissible evidence. *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568; *International Shoe Company* v. *Federal Trade Commission*, 279 U. S. 832; *Arkansas Wholesale Grocers Ass'n.* v. *Federal Trade Commission* (C. C. A. 8), 18 F. (2d) 866, 871.

## *Argument.*

### *Introduction.*

The Commission seeks in this Court of last resort to change the issues joined and tried in its proceedings, which are apparent from its complaints, findings of facts and order to cease and desist. The issues were that respondents, in the sale of their products employ ten certain specified "methods", which "constitute unfair methods of competition" and not that of a conspiracy or scheme to defraud. On this theory, testimony was taken, findings of facts were made declaring the alleged practices to be "unfair methods of competition", and a cease and desist order was issued specifically prescribing in separate paragraphs each of the alleged unfair methods of competition. The court understood the issues and in their opinion state:

> "The order to 'cease and desist' included all the respondents, and forbade ten kinds of trade practices" (R. 487).[6]

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[6] There is a typographical omission at R. 487 in the report of the court's opinion. The word "ten" is omitted from the line immediately preceding the phrase "kinds of trade practices". See 86 F. (2d) 692, 694.

At no time did the Commission charge or find that a conspiracy existed or that the acts or practices, whether lawful or unlawful, were done pursuant to a "fraudulent selling scheme", as the petitioner now essays to argue in one part of its brief at pages 22 and 23, although at page 20 it states: "The practices of respondents constitute *methods* of competition". Under the theory of the case, as tried and as decided by the Circuit Court of Appeals, each alleged unfair method of competition must stand or fall on its own feet; it cannot be aided by a belated, futile attempt to charge respondents with a common design and conspiracy. If any of the practices are not unfair, proscription of them by the Commission is unwarranted, regardless of how reprehensible any accompanying method employed may be. The remedy is easily at hand, for if the unfair methods are excised, only fair methods remain, and there would be no reason then to argue that the fair methods must fall with the unfair. A business concern as large as this, with hundreds of salesmen in the sale of its wares, may and does employ various sales methods. Some may be legitimate, while some may innocently come within the pale of Section 5 of the Federal Trade Commission Act. Surely, no more should or could be demanded by the Commission than that the unfair methods alleged in the complaint be stopped.

The entire brief of petitioner reflects a studious and labored attempt to refuse to permit the only important issue in the case, which is found in Question 1 of its Questions Presented (Pet.'s Br., p. 1), to be decided upon its own merits or demerits. Whether the open and clearly stated "free on condition" sales approach is fair or unfair depends wholly on this particular method of competition. Recognizing the present

weakness of its position, petitioner devotes a whole section of its brief (pp. 59-61) to argue that this method is only a part of an integrated scheme, although it admits that probably standing by itself, this method might not be unfair (p. 60). Adopting from the law of fraud the irrelevant concept, that to prove a case in fraud, all the representations need not be false or material or induce the sale, so long as there is a material false representation, petitioner apparently urges that, since the "free on condition" method was used in connection with other methods, it must fall with them. The essential fallacy is, of course, that in the law of fraud, the plaintiff seeks damages and proves his right thereto if he can establish only one material misrepresentation. That other truthful representations were used in addition to the misrepresentation will not prevent recovery. Here, the Commission does not seek damages. Its purpose is prophylactic in that it seeks to protect the public and competition from unfair practices (*Federal Trade Commission* v. *Klesner,* 280 U. S. 19). It does not perform its function by prohibiting the fair along with the unfair. For the Commission's laudable purposes, the public and competition are protected by prohibitions against only the unfair practices.

Further, if as petitioner argues, the particular method is a part of an integrated scheme would it go so far as to say that the use of this method by and of itself would be a violation of the order. Since it most certainly would, the bubble of integration bursts of its own labored and artificial treatment.[7]

[7] As a matter of fact, as recently as September 13, 1937, the Commission issued a complaint, Docket No. 3225, entitled, *In the Matter of Askins Retail Stores, Inc.*, charging as the sole unfair method of competition, the use of "free on condition" advertising, independent of any other representations.

Petitioner in its brief in Question 1, asks this Court to decide whether the "free on condition" sales representation is an "unfair method of competition within the meaning of Section 5 of the Federal Trade Commission Act". That is the sole issue and not whether in combination with other methods, or pursuant to a fraudulent scheme, it should be condemned. The court should consider only that question which petitioner has presented (*Helvering* v. *Taylor,* 293 U. S. 507, 511).

The lower court correctly treated each paragraph of the desist order independently to determine whether the several methods forbidden by the Commission constituted, as a matter of law, unfair methods of competition. This is the recognized duty of the Circuit Court of Appeals in dealing with Commission orders.

> *Federal Trade Commission* v. *Gratz, et al.,* 253 U. S. 421;
> *Federal Trade Commission* v. *Curtis Publishing Co.,* 260 U. S. 568.

The paragraphs of the desist order which the court believed were supported by findings based upon testimony, and constituted unfair methods of competition, were affirmed. Paragraphs 1 and 3 dealing with "free goods on condition" sales advertising did not in the court's opinion amount to an unfair method of competition, and consequently, the court eliminated these two paragraphs from the order (R. 489, 492). It is submitted that the Court was bound to consider each practice separately, because the Commission, itself, had set out the practices separately in its order. The Court had no other alternative.

Petitioner fails, at page 22 of its brief, aptly to state or fairly to characterize the substance of the decision of the court below on the "free goods on condition" question now in issue. The court clearly did not single out this one "particular falsehood" for preferential treatment; the court denied that there was any falsehood involved in it. It held that the so-called "free offers" were not an unfair method of competition. In other words, the particular method is not unfair, is not false, is not deceptive, does not restrain substantial competition in commerce, and public policy does not require its prohibition. Petitioner does not prove the method unfair or the opinion of the lower court incorrect by reading into the opinion what is not there. Nor does it prove the representation in question false merely by labeling it false over and over again.

## POINT ONE.

**For a tradesman to offer to give away one thing on condition that the customer buy something else, is a time honored, customary sales inducing medium that is not fraudulent or deceitful or against public policy.**

[Answering Petitioner's Point I.]

Respondents admit that representations were made by the agents to prospective purchasers, that the sets of encyclopedias would be given to them, free on condition that they pay for the looseleaf quarter-annual supplements to be supplied to them for ten years, and aggregating at the end of that period ten additional, or twenty volumes in all. The Commission's witnesses so testified. Thus, the testimony of Blanche

Guertin quoted by petitioner at page 33 of its brief is typical. She stated:

> "She told me I was getting the books, the ten volumes, as a gift, I understood, and I was to pay $69.50 for the ten years' extension service" (R. 227).

Respondents contend, and the court below so held, that there is no unfairness in such combination offers and their use does not substantially affect interstate commerce, and does not constitute an unfair method of competition.

The Commission was designed to eradicate substantial evils affecting interstate commerce. It is not given broad and sweeping censorship of all business ethics and its enabling statute "does not purport to establish a decalogue of good business manners or morals" (*Northam Warren Corp.* v. *Federal Trade Commission,* 59 F. (2d) 196, 198). Further, as has been aptly stated:

> "It was never intended that the Commission should act the part of a petty traffic officer in the great highways of commerce."
>
> *Flynn & Emrich Co.* v. *Federal Trade Commission,* 52 F. (2d) 836, 838.

Nothing of substance is here involved. The representations present an instance of an ancient, innocuous combination sales approach, which merely enables a salesman to gain an audience. Everybody knows about it. It has never even been bad business manners to offer special sales or special inducements by free offers. It is typically American to do so.

The lower court realized this, and declared that "pedantic scrupulosity" and "too solicitous a censorship" on the part of the administrative agencies do not fit in with the American system of government, and might if sanctioned, pave the way to unwelcome arrogance. The court stayed the Commission's interference with non-existent evils and restrained the Commission from its excessive show of power. Judge Learned Hand, writing the opinion for the unanimous court, chided the Commission for its impractical absurdity, saying (R. 489):

> "It is true that the Commission is not to sanction unfair trade practices merely because they are of long standing; its duty is to bring trade into harmony with fair dealing. *Federal Trade Com.* v. *Winsted Hosiery Co.*, 258 U. S. 483, 493, 494. To the discharge of that duty it should not, however, bring a pedantic scrupulosity; too solicitous a censorship is worse than any evils it may correct, and a community which sells for profit must not be ridden on so short a rein that it can only move at a walk. We cannot take seriously the suggestion that a man who is buying a set of books and a ten years' 'extension service', will be fatuous enough to be misled by the mere statement that the first are given away, and that he is paying only for the second. Nor can we conceive how he could be damaged were he to suppose that that was true. Such trivial niceties are too impalpable for practical affairs, they are will-o'-the-wisps, which divert attention from substantial evils."

Petitioner seeks to circumvent the effect of the court's proper decision by refusing to accede that it is dabbling in trivial niceties. The Commission,

being embarrassed, and although without evidence of fraud, seeks to convince the Court that this is a clear case of fraud comparable to the fraud that must be proved in an action at law, and therefore clearly within the passing off cases heretofore decided by this Court.

The "give away on condition" or "free on condition" retail sales method bears no indicia of fraud or deception, nor is it opposed to good morals. Americans are quite accustomed to buying in this way.[8]

It will not take long for the Court to be convinced that *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, where cotton was palmed off for wool, is not here relevant. Neither is *Federal Trade Commission* v. *Keppel & Bro.*, 291 U. S. 304, where the candy lottery method was shown to have cheated children in the "penny candy trade", and to have instilled in them a gambling spirit. *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, where the origin of goods was falsely misrepresented, and *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, where yellow pine lumber was passed off for white pine, upon which the petitioner leans for its greatest support, are similarly, of course, not in point at all. The "yellow pine" case is just another example of selling brass for gold.

Here, we simply have the question of a purchaser seeking to buy an encyclopedia with looseleaf supple-

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[8] See *People* v. *Gillson* (1888), 109 N. Y. 389 (a cup and saucer were given away with a sale of two pounds of coffee); *Long* v. *State* (1891), 74 Md. 565 (crockery was given away with sales of coffee); *Commonwealth* v. *Emerson* (1895), 165 Mass. 146 (a photograph was given away with a purchase of tobacco); *Boon-Iseley Drug Co.* v. *Doughton* (1925), 189 N. C. 720 (Rexall penny sales—offering two things for the price of one plus a penny).

ments for a ten years period, who gets exactly what he wants for a price he evidently believes to be reasonable and for which he signs a written contract. The sales method involved being merely that the purchaser is told he will get the encyclopedia free *on condition* that he pay for the supplement.[9]

It is incontrovertible that the meaning of the words, "unfair method of competition" must be interpreted in the light of sensible usages. It has been the common custom of our country for generations, for business men, as a sales inducing medium to give away goods free on condition that other goods are purchased. The court will take judicial notice (see *New Jersey Asbestos Co.* v. *Federal Trade Commission* (C. C. A. 2), 264 Fed. 509) of the fact that for many years our great daily and Sunday newspapers have published advertisements in which merchandise is offered "free on condition".

Hundreds of thousands of dollars are spent annually in this form of advertising. If it is fraudulent, then the great daily newspapers and magazines are fostering and participating in frauds. Every publication in this country of any consequence accepts and carries such combination advertisements which offer to give something free in consideration of a purchase

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[9] It is important to note that the purchaser is not getting something that is merely "just as good" or equivalent. He is getting exactly what has been offered him. Therefore, such cases as *Wilson* v. *U. S.*, 190 Fed. 427 (Pet.'s Br., p. 50), are inapplicable, and lay down no rule contrary to respondents' contention. There the property was not of the value represented. That it may have been worth what the purchasers paid is, of course, not the test. As the court there said, the purchasers "would not obtain that which they were promised" (p. 434). Nor is the case of *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, cited by petitioner at page 52 of its brief, apposite to the case at bar. There the court found that sales were induced by deliberate falsehoods as to existing facts and the disparagement of the merchandise of competitors.

of another article or a subscription to a book club, such as the Literary Guild or the Book-of-the-Month Club, etc. The Appendix, *infra*, page 59 *et seq.*, contains a representative collection of prevailing advertising of the nature here in issue. They relate to matters as diverse as books and bungalows. The Sunday and Monday editions of the New York Times for October 3 and 4, 1937, carried full page "combination" advertisements, offering to give a book "free on condition" that the purchaser obligate himself to the purchase of at least four other books during the course of a year.

Such American sales inducing practices acquiesced in and established over a long period of time do not deceive or damage prospective purchasers and should not be the concern of the Federal Trade Commission. A trader must be given some leeway in the sale of his wares and if his method is not fraudulent, deceptive or immoral he should not be interfered with by a governmental agency.[10]

Expert business umpires such as the Commission, fail, sometimes, to understand that business cannot be encouraged to go ahead if tangled up with too much

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10 Courts do give leeway to merchants in the sale of their merchandise. Respondents referred, in the court below, to the legal sanctions afforded the merchant in the "time honored custom" of "puffing his wares" (*Ostermoor* v. *Federal Trade Commission*, 16 F. (2d) 962). Petitioner now devotes three pages of its brief, pages 50-53, to prove that fraudulent statements of fact can never be excused as mere puff. With this proper principle, respondents fully agree, but contend that the principle has no application to the sales method concerned. The method at bar contains no fraudulent misstatement of fact. Since the presentation is wholly fair, it need not be justified as trade puff. The fact that trade puffing is permissible within certain limits proves that our courts do give merchants leeway in permissible expressions in the sale of wares. Nothing more is contended for here.

harness. Judge Hand so informed the Commission (R. 489):

> "* * * a community which sells for profit must not be ridden on so short a rein that it can only move at a walk. * * *."

**A. Representations not false—Respondents' customers are not deceived.**

Petitioner's brief is based on the assumption that the "free on condition" representations employed by respondents are false, fraudulent and deceptive, and hence unfair. It is now willing to concede for the first time, that certain free combination offers may be fair and legitimate but argues that respondents' representations do not fall within this legitimate category.

The Commission's half-hearted concession shows the Government's hopeless dilemma, for the so-called "*genuine* offers, to give something away free of charge" (Pet.'s Br., pp. 38, 39), which the Commission believes are not unfair do not differ in kind from the offers involved in the case at bar. In both, there is a representation that one part of a combination is "free"; in neither, is the "free" part unqualifiedly free; in both, the cost of the article represented to be "free" is retrieved, and absorbed in the price charged for the other part of the combination; in both, there is the possibility that without the use of the word "free", the combination might not have been sold and an audience with the purchaser might not have been obtained. Any other distinction, which the petitioner has ingeniously devised, is a distinction without a difference. In both, the buyer knows exactly what he is getting and how much he is paying.

That the Commission itself does not agree with the point of view expressed for it, at pages 38 and 39 of its brief, where it is stated that certain combination "free" offers are legitimate while others are not, is manifest from a very recent complaint issued by the Commission. That complaint, *dated September 13, 1937,* is Docket No. 3225, and is entitled, *"In the Matter of Askins Retail Stores Inc."* The Commission there seeks to enjoin the respondent company from offering to give away free, a man's hat with the purchase of a suit or topcoat, and a dress with the purchase of a lady's coat. The theory of this complaint is diametrically opposed to petitioner's pretended demarcation of free offers. Irrespective of what may appear in the Government's brief as to the Commission's position in these matters, the Commission undoubtedly believes that *all* combination "free" offers, including those set forth in the Appendix, are so reprehensible as to warrant its action in removing this type of advertising from the commerce of the country. The policy of the Commission, declared in the foregoing complaint, literally takes the heart out of the argument made by petitioner in its brief on the question of the legality of combination "free" offers.

Certainly, respondents' customers, each and every one of them—the handful of dissatisfied and the thousands of satisfied ones, *knew that they were not getting something for nothing,* for they were told and were agreeable, at the time that each contract was signed, to pay a substantial sum to get that which was described as "free on condition". Everybody knows that many people who buy books and sign contracts, change their mind and seek to find unfair ways of reneging and disowning their bargains. Every business is afflicted with this type of customer.

Petitioner cannot point to a single instance where a purchaser was induced to believe that he was getting the ten volumes of the encyclopedia for nothing. Petitioner has searched the record and in its present brief quotes, at pages 31 to 35 inclusive, what it evidently believes are its six most damaging witnesses against respondents. Even though badgered and led by the prosecuting attorney for the Commission, an examination of the testimony of these witnesses reveals no deception, no misrepresentation and no fraud.

Thus, Miss Alice Sterling actually paid the salesman *$5.50* at the time she was offered the "gift" (R. 255-256, Pet.'s Br., pp. 31-32). She knew she could not get either part of the combination unless she paid out money. She knew it *before she signed a contract* which stated in specific terms how much money she was to pay and what books she was to get. Yet, she, secretary of a Y. W. C. A. signed the contract, and later changed her mind about the books [without having seen them (R. 256)], because she realized after the salesman had gone, *not that she had been misled,* but that she did not think she could live up to the terms of the contract (R. 255). Clearly, this lady's testimony belies any deception or falsity on respondents' part as a result of the method in question.

Mrs. Lucy Staples Wilbur's testimony (p. 32) emphasizes that she realized she had to pay money to get the books. Mrs. Wilbur merely refused to accept the books because the articles in them were not signed by certain well known educators as were the articles in some other reference book (R. 351). Was this woman deceived by the "free offer on condition"? Of course not.

Miss Elsie Anderson testified that she was told by

the agent that she would get the books "free", but must pay $69.50 for the looseleaf extension service (R. 352). This customer, as in the cases of all, was not under the delusion of getting something for nothing. She also signed a contract whereby she knowingly agreed to pay $69.50 in return for which she was to get the encyclopedia and the ten year supplement service (R. 357). All of these facts, she admitted, were set forth in the contract (R. 358). She refused to keep the books because she thought "they were not up to date, and the pages were not numbered, the binding wasn't good and so forth" (R. 357).

Petitioner quotes from the testimony of Mrs. Blanche Guertin who made no complaint about her bargain, but simply stated that she knew she "was to pay $69.50 for the ten years extension service", in order to get "the ten volumes as a gift" (R. 227). Respondents do not question that such representations were made, but insist that there is no unfairness in them. Certainly, Mrs. Guertin's concluding testimony displays no feeling on her part that she had been cheated or treated unfairly. She testified that *she never made any complaint and had no complaint to make.* In fact, she said:

> "I was not dissatisfied with the books at all" (R. 230).

Mary Gambee, petitioner's next quoted witness, fully understood that she was to pay money to get the looseleaf supplement and the books. She signed a contract the terms of which were clear to that effect, although she says she didn't understand it was a contract; she merely signed a paper "to give them my name and address, so that they would know *the*

*amount that I was to pay each month"* (R. 113). The reason she had the books returned without inspecting them was because he "didn't feel she could afford them". It is natural, we presume, but hardly truthful, for the witness to testify months after the contract had been signed in 1928 and while the company was still trying to recover on its contract, that, had the books and the extension service been offered to her for sale, she would not have accepted. The question and the witness' monosyllabic negative answer were properly stricken from the record by the trial examiner, for the answer was a mere conclusory guess by a purchaser who had regretted her purchase because she realized, some time afterwards, that she could not afford the books. Far from proving reliance, as petitioner would have it, the witness' "No" proves that when people refuse for one pretext or another to pay their just debts, it is easy to have them answer in a way which they believe will let them out.

Commission's next and last star witness, Miss Opal Bryson, is similarly of no assistance to establish fraud. She knew she was not getting something for nothing and no one tried to make her believe to the contrary. She testified that she gave the agent a check for $9.50 on signing a contract (R. 116). Without waiting for the books to come, she stopped the check and wrote to the Company that she "didn't want the books" (R. 116, 117). Her identical negative answer to the Commission's identical leading question, whether she would have accepted the proposition had the agent offered to sell her the books and the looseleaf supplement for $69.50, was likewise stricken by the Commission's examiner, as inadmissible, and properly forms no part of the record. This

witness at the time of signing the contract, agreed to accept the exact proposition she later decided she didn't want, and then asserted she would not have accepted in the first place.[11]

Upon such and similar testimony, the court below came to the only proper conclusion, that no unfair method of competition was involved in the "free on condition" sales approach under review. Not even a superficial indication of fraud could have been found from such testimony.

Respondents in using the "free on condition sales representations" were not committing "deliberate falsehoods", as petitioner would have this Court believe (Pet.'s Br., p. 23). They were using a legit-

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11 Only the testimony of Mrs. Guertin, *supra*, page 29, was subjected to cross examination, for this particular hearing was held in respondents' home city, Chicago. The Commission took testimony in eleven cities from coast to coast, and only in the three hearings conducted in Chicago were the witnesses subjected to cross examination. Of necessity, therefore, much loose, hearsay and generally inadmissible testimony found its way into the record. Some of this was stricken by the examiner upon respondents' motion (R. 49-63). The Commission's examiner found respondents guilty of unfair methods of competition despite his ruling on the evidence. Respondents thereafter filed their exceptions to his adverse report.

Curiously enough, although the Commission's attorney filed no objection to the examiner's ruling on the evidence and the Commission took no action except to confirm the examiner's findings by its own findings of facts and cease and desist order, petitioner at this too late date, argues the admissibility of this evidence. It contends that in any case, whether admissible or not, the testimony, although stricken by the examiner without objection on its part, is still a part of the record.

Having noted no exception to the action of the examiner, the Commission's attorney and likewise the Commission would appear to be estopped from disputing, more than seven years later, the ruling of its own examiner in this Court of last resort. In so far as the examiner had ruled favorably to respondents on their motion to strike, nothing further could be asked of them. Exceptions to the ruling were up to the Commission and its attorney. Not having been made up till now, they must be deemed waived. The cases cited by petitioner (Pet.'s Br., p. 30) have no reference to the situation here presented. In any event, the entire record, including the stricken testimony was before the court below.

imate sales method whereby the customer was told what he was to receive and how much he was to pay, and no misstatements or non-disclosures were involved.

In the case of *John C. Winston Co.* v. *Federal Trade Commission,* 3 F. (2d) 961,[12] involving facts similar to the situation in the instant proceeding and followed by the court below, the court laid down the following test:

> "The sole question is whether hidden in the transaction there is an inducement, based on an untruth, that the purchaser is getting ten volumes of the encyclopedia for nothing" (p. 962).

Using this practical test we can readily see that no such inducement is present in this record. Each purchaser was well aware and was made to understand that a substantial sum had to be paid in order for him to get the encyclopedia and the looseleaf supplements. The Commission's witnesses so testified.

**B. Fraud not being proved, it cannot be presumed. The familiar fraud principles cited by petitioner are wholly inapplicable.**

Petitioner having assumed that the combination "free on condition" representations constitute a fraud upon the purchasing public, cites all the familiar fraud and deceit principles. Respondents readily agree with the soundness of the principles announced and the application thereof to the cases cited, but the citation and repetition of fraud principles cannot spell out fraud where none exists and cannot make the facts involved in the question here in issue a suitable one

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12 This case is discussed at length *infra*, page 36 *et seq.*

for the application of those principles. Throughout its brief, there is not one citation of a case at law or in equity which is at all similar to the facts here disclosed. In every one, there is a definite fraudulent misstatement of a material fact and all the elements of common law frauds are present. In every one, fraud has been proved and has not been presumed.

Respondents, for example, agree that the "illegality of fraud is not cured by the credulity of its victims". But, this principle can have no bearing here because no fraud is involved or has been proved. Cases cited by petitioner to prove its principle of law demonstrate the disparity that exists between the facts involved in fraud cases, such as those cited at pages 43-44 of petitioner's brief, and in the "free on condition" method.

Thus, in *Bailey* v. *Smith,* 23 F. (2d) 977, the crooked vendor of a business deliberately falsified and exhibited to the buyer a padded list of accounts receivable to induce the sale. Naturally, the doctrine of *caveat emptor* was held to have no application, for the buyer was a victim of a cunning and vicious theft by fraud. Similarly, in *Strand* v. *Griffith,* 97 Fed. 854, a vendor of a stock of goods falsely represented the same to be new when in fact they were moth-eaten, old and shopworn. The vendor in addition, falsified an invoice and lied to the vendee that it truthfully showed the wholesale value of the goods at the market. This was, indeed, actionable fraud.

In *Pattiz* v. *Semple,* 12 F. (2d) 276, the seller of a hotel falsified and padded the statement of monthly income of the hotel and deliberately altered the books generally to lie about the financial condition of the

hotel. On the basis of these frauds, the vendee purchased the hotel. Such false representations to induce the sale were properly held to be fraudulent.

*Mergenthaler Linotype Co.* v. *Evans,* 69 F. (2d) 287, concerned a false statement that an old linotype machine which had been damaged by fire was in fact worthless. On the basis of this statement, the vendee purchased a new machine from the seller. In truth and fact, the old machine was not worthless. The lying statement was made by the agent merely to induce the sale of a new machine.

In *Keeler* v. *Fred T. Ley & Co.*, 65 F. (2d) 499, the sale of land was induced by a promise that a building would be erected to cost a certain amount. It was proved that the promissor had wilfully lied because he never intended to construct such a building.

*O'Hara* v. *United States,* 129 Fed. 551, was a criminal case that involved the use of the mails in a scheme to defraud. Under the pretense of having a system for betting on horses, money was obtained from gullible people. As a matter of fact, the defrauders did not bet, but pocketed the money and attempted to make the ridiculous defense that since the scheme was on its face impossible of execution, there was no fraud.

In *Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, it was held that the use of the term, "Syrup of Figs" to designate a laxative medicinal preparation, was unfair where fig juice was a very unimportant and unnecessary element in the composition of the preparation whose operative laxative element was senna and not "Syrup of Figs". In this case, it is

clear that the purchaser was deceived into believing that he was getting a fig juice laxative when in truth, he was not.

The case of *Barndt* v. *Frederick,* 78 Wisc. 1 (Pet.'s Br., p. 47), was a case of a clear cut and deliberate fraud in the sale of mining stock. Defendant represented to the purchaser that the mining company had $1,500,000 worth of ore ready for crushing. This was false. The defendant's attempt to squirm out of the fraud by claiming that the statement was too absurd and incredible, which drew from the court the language quoted by petitioner at page 47, could have no effect on the outcome since fraud was present in that case.

The case of *Florence Mfg. Co.* v. *J. C. Dowd & Co.,* 178 Fed. 73, was an ordinary passing off case wholly different from the facts in issue and held that the law is made for the public rather than merely for experts. This is not questioned.

Petitioner presses *Bailey* v. *Perkins,* 224 Mich. 27, (Pet.'s Br., pp. 44, 45), as a case directly similar to the instant one. The evidence in that case showed that a sale of a business was fraudulently induced by representing that certain material cost $700 when it only cost $400 and that some machines were new when they were rebuilt and that the business was prosperous when it was barely paying expenses. This case of rank fraud is hopelessly irrelevant to the instant case. *Smith* v. *MacDonald,* 139 Mich. 225, from which the *Bailey* case quotes at length was a stock fraud swindle of the worst kind.

In *Falter* v. *United States,* 23 F. (2d) 420, the Circuit Court of Appeals for the Second Circuit was

confronted with a criminal case involving a clear misstatement of facts. There the United States was defrauded by false representations made by a former Chief of the Textile Branch of the Surplus Material Division of the War Department to his successor in office that certain contracts with a company were unfilled and that therefore the company was entitled to receive more merchandise at a lower price. Judge Learned Hand, speaking for the court, declared (p. 424):

> "His false utterance concerned existing facts; *i. e.*, that the orders had been issued, and that the quantities they prescribed had not been delivered."

The defendant's guilt on the basis of the above could not be in doubt. Language used by the court in such a case and quoted by petitioner at page 45 of its brief can have no possible bearing upon our problem.

It is demonstrably clear from the cases cited by petitioner and commented on above, that the facts in not one of these cases can be held to be analogous to the facts here involved. Every case that is cited is predicated upon a defendant's fraudulent misstatement of a material fact. Placed side by side with the facts involved in the "free on condition" sales method, the propriety of the decision of the Circuit Court of Appeals refusing to hold the "free on condition" sales method unfair, is apparent.

**C. The Winston and Consolidated Cases Analyzed.**

There is no case of this Court in point. Prior to the decision of the court below, the only applicable

decision was that of the Third Circuit, in *John C. Winston Co.* v. *Federal Trade Commission* (C. C. A. 3) (3 F. (2d) 961), where the court held that the "give away on condition" sales method in the sale of encyclopedias was not an unfair method of competition because it contains no hidden inducement based on an untruth. Measured by ordinary standards of intelligence the court said, the method could not be unfair. The court declared in no uncertain language (p. 962):

> "The sole question is whether hidden in the transaction there is an inducement, based on an untruth, that the purchaser is getting ten volumes of the encyclopedia for nothing. This is difficult to believe when, obviously, he knows that the encyclopedia is the principal thing to which, of necessity, the services are merely incidental. It is conceivable that a very stupid person might be misled by this method of selling books, yet measured by ordinary standards of trade and by ordinary standards of the intelligence of traders, we cannot discover that it amounts to an unfair method of competition within the sense of the law."

The court below in its decision approved the *Winston* case and followed that decision. They refused to agree with the Commission that *Consolidated Book Publishers Inc.* v. *Federal Trade Commission* (C. C. A. 7) (53 F. (2d) 942), was a contrary decision but said that even if interpreted to be contrary, they preferred to agree with the Third Circuit Judges that the "bare practice" of offering goods "free on condition" that a customer buy something else, is not

an unfair method of competition within the sense of the law. Speaking of the decision in the *Consolidated* case, the court below stated:

> "* * * the case was complicated by a number of graver practices which probably colored the whole. We are not satisfied that stripped of these, the bare practice would have been held bad; if so, we prefer to follow the Third Circuit" (R. 489).

Only in the *Winston* and the instant case did the single method here involved, receive the consideration it deserved. In these two cases, the combination sales approach was examined independently of anything else. The sales method was tried on its own merits.

Since Question One of the Questions Presented by petitioner for decision by the Court concerns this sales method, independently and apart from anything else, this Court should likewise consider, as did the court below, only the "bare practice" of offering goods "free on condition".

In the *Consolidated Book Publishers, Inc.* case, *supra,* the method in question was not separately analyzed but was treated as part of the other and more serious practices there involved. Without attempting to evaluate the different parts of the Commission's order in that case, the Court of Appeals in the Seventh Circuit affirmed it in its entirety.

Despite the fact that the court below asserted that it was in harmony with the facts and the law of the *Winston* case, petitioner now insists that the *Winston* case is irrelevant in the consideration of, and utterly different from the instant case.

In the face of the following five indisputable facts of similarity, such an assertion is groundless.

*First*: The allegations of the complaint in the *Winston* case[13] charging the use of the "free on condition" method are practically identical with the allegations in the complaints at bar (R. 4, 23) as paragraph 2 of the *Winston* complaint clearly shows.

> "Par. 2. Said respondent in the course and conduct of its said business employs numerous agents and salesmen upon a commission basis in the various states of the United States and the cities thereof, to take orders for sets of 'Winstons Cumulative Loose Leaf Encyclopedia' in ten volumes, * * *. In the course and conduct of its said business said respondent by and through its agents, represents to its prospective customers that respondent will present free of charge its said set of encyclopedias upon the condition that such prospective customers will furnish letters of recommendation concerning the merits of said encyclopedias. As a condition precedent to availing themselves of this offer such prospective customers are required to subscribe to a so-called 'Cumulative Loose Leaf Annual Service' accompanying the said encyclopedias, which said service respondent, by and through its agent, represents it will thereafter furnish to the owners of the said encyclopedia so that information concerning current events may be obtained each year as supplementary to said encyclopedias. The price at which said service is to be furnished is represented by respondent through and by its agents to be the sum of $49, which said sum pays for the said service for the period of ten years, all of which $49 is to be paid within one year after the date of

[13] The excerpts from the complaint, findings and order of the *Winston* case are from Federal Trade Commission Decisions, Vol. 8, pp. 177-186.

the transaction in monthly installments. The said representation by said respondent, by and through its agent that the sum of $49 is in payment for the so-called Cumulative Loose Leaf Annual Service is false and misleading, as such sum is greatly in excess of the price at which said respondent can furnish said service to bona fide purchasers and is sufficient to compensate the said respondent for the set of encyclopedias sold to its customers, together with the accompanying service. In truth and in fact said customers of respondent, in subscribing to the extension service in the manner set out above is purchasing the said set of books and the extension service for the sum of $49 under the mistaken belief that he is receiving the said set of books free of charge and is paying only for the said service."

*Second*: The *Winston Company* stipulated, as petitioner notes in its brief (p. 55) that the Company through its

"agents and salesmen represented and still represent to the aforesaid purchasers and prospective purchasers that the said price of $49 represents the fair value of the said annual and research services, and that by obtaining not only the said services but also the ten volumes of the encyclopedia for that price the purchaser in effect would obtain the said *ten volumes free of charge.*"

*Third*: The Commission in the *Winston* case made findings of fact (which according to petitioner's brief [p. 82] are conclusive if *any* testimony is present to support them), repeating the above stipulated fact and adding the following details as to the "free on condition" method:

"The representations of respondent through its agents and salesmen to purchasers and prospective

purchasers that the sum of $49 represented or represents the value of the said Research and Annual or Revision services and that by obtaining not only the said services but also the ten volumes of said encyclopedia for that price, they in effect would obtain the said ten volumes free of charge has deceived and misled, and is deceiving and misleading to said purchasers and prospective purchasers, as tending to cause and causing the belief that said volumes are delivered free of charge, either by reason of a special contract or otherwise, when in fact the sum of $49 was at all times the real and customary selling price of the said three items, the ten volumes and the said Research and Annual or Revision services, and was sufficient to repay respondent the cost of production of the said 3 items together with a reasonable profit thereon" (8 F. T. C. Decisions, p. 185).

*Fourth*: The Commission's cease and desist order, in language similar to paragraphs 1 and 3 of the Commission's desist order in the instant case, forbade the *Winston Company* from directly or indirectly:

"* * * representing to purchasers and prospective purchasers that any part of a combination offer is in fact or in effect given free of charge when the recipient must pay a consideration for the whole or some element of the combination to be entitled to receive the alleged gift." (8 F. T. C. Decisions, p. 186).

*Fifth*: The court on the basis of the pleadings and the findings of fact of the Commission, vacated the order and stated that in their opinion there was nothing hidden or untruthful in the sales transaction,

and that consequently it did not "amount to an unfair method of competition in the sense of the law".

The foregoing five facts demonstrate the obvious similarity between the *Winston* case and the instant one as far as the "free on condition" sales method is concerned, and deprive petitioner of any ground for a supposed distinction between the two cases. The same facts and issue were involved, and the same result was reached in both. It must be conceded that the court below thought so when they wholly agreed with the reasoning expressed in Judge Woolley's opinion in the *Winston* case.

Although the Commission's desist order sustained in the *Consolidated* case did have a paragraph similar to the paragraphs eliminated from the instant order by the court below, this was practically the identical paragraph held not to state an unfair method of competition by the Circuit Court of Appeals for the Third Circuit in the *Winston* case.

It is submitted that the opinion of the Circuit Court of Appeals in the *Consolidated* case should not be regarded as an authoritative opinion as to the "bare practice" of the "free on condition" sales method.

The decision of the court below and of the *Winston* case, dealing solely with the issue here involved, correctly ruled that the universally accepted combination sales method of giving goods away "free on condition" that others are bought, does not constitute an unfair method of competition within Section 5 of the Federal Trade Commission Act.

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In concluding the most important point in the case, we wish again to emphasize to the Court that the sole question to be decided under this point is found in

Question One of the Questions Presented by petitioner, *i. e.*, Is the "free on condition" sales method, by and of itself, an unfair method of competition? To that question and to it alone, have we directed the foregoing discussion of the law and facts. We respectfully submit that it has been established beyond a doubt that the court below was justified in reversing paragraphs one and three of the desist order. It is clearly not unfair for a merchant to offer to give away one thing on condition that the customer buy something else. This is a legitimate trade practice that has continued uninterruptedly from time immemorial. The method is not fraudulent, deceitful or against public policy.

## POINT TWO.

**The court below committed no error in excluding Ward from the seventh and ninth paragraphs of the order and in reversing the order entirely as to Greener.**

[Answering Petitioner's Point III.]

Despite petitioner's pretentious argument under its Point III, all that it complains of is the lower court's elimination of respondent Ward from two paragraphs of the desist order, the seventh and ninth, and of the total elimination of the employee respondent, Greener.

The court also ruled that respondent Stanford was not properly included in paragraph tenth, but petitioner has now elected to abandon this issue along with several others (Pet.'s Br., p. 66).

Petitioner relies upon two theories of law namely (1) that persons who manage corporate affairs can-

not escape liability for unlawful acts which they personally control and supervise by hiding behind the corporate entity, and (2) that injunctive decrees should be as broad as necessary to prevent evasion. It claims that under the first theory, the order should have been affirmed as to Stanford and Ward, and that under the second, as to Stanford, Ward and Greener.

The court below did not controvert the validity of these theories. In fact, they declared the first to be the one governing this case and cited many of the cases petitioner now needlessly puts forward to support its contentions. Nor do respondents, at this time, quarrel with the theories propounded.

Respondents had indeed cited authorities and argued in the court below that the three respondents were improperly included as parties to these proceedings in their individual capacities, on the grounds that nothing was pleaded in the complaints or proved at the hearing justifying any personal liability on their part.[14] But, only as to employee respondent, Greener, was the contention fully sustained. The court believed him to be "merely the auditor and in charge of the companies' finances", having "little or nothing to do directly with trade practices" (R. 488), and the order was accordingly reversed as to employee Greener. Concerning respondents, Stanford and Ward, the order was for the most part affirmed.[15]

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14 A separate motion was made in the court below to dismiss the complaints as to the individuals, because the complaints were fatally defective in that no unfair methods of competition were alleged against them as individuals, all acts pleaded being corporate acts (R. 473).

15 As explained, *supra*, page 11, respondents do not and cannot at this time urge the issues decided unfavorably to them. The court's refusal to reverse the entire order as to Stanford and Ward, as well as Greener, is one of these issues from the argument of which respondents are at present foreclosed.

### *As to Ward.*

The court, in arriving at its decision by applying the rule embodied in petitioner's first theory and conceded to be correct, found that there was no evidence that Ward personally controlled and supervised the acts prohibited in the seventh and ninth paragraphs of the desist order, and consequently, he was held not to have been properly included therein. That Ward may have known in a general way of the practices does not make him responsible therefor. The publication of a list of contributors (par. seventh) and of testimonials (par. ninth), was not his concern (R. 424, 453). He had nothing to do with the administration and publishing end of the business, that was Stanford's job (R. 399).

The agents in the field in demonstrating the books may have exhibited the list of contributors and the testimonials, but the agents were the agents of the Standard Education Society and not of W. H. Ward individually (see *National Cash-Register* v. *Leland,* 94 Fed. 502, 508). Clearly therefore, as the court below held, Ward cannot be held personally liable for the acts of the agents of the corporation relative to paragraphs seventh and ninth of the desist order, for there is nothing in them that can be traced to him personally. The conduct prohibited by these two paragraphs was thought by the Court of Appeals to be "amply connected" with Stanford, but they could not see "that Ward was involved" (R. 491).

It is further contended by petitioner that although ordinarily direct evidence of control and supervision over the conduct complained of may be necessary to sustain personal liability, no such evidence is necessary here because Stanford and Ward were in com-

plete control of the corporation and were its controlling stockholders. The Court should remember that the Standard Education Society, the corporation here involved, has been in existence for over 25 years. Here, we do not have the type of case petitioner attempts to have the Court believe it to be by citing cases like *Saxlehner* v. *Eisner,* 147 Fed. 189. In that case, the corporation was but the cover for the individuals' enterprises, a device to be used by them for the pirating of plaintiffs' labels. In reality, in such a case, the corporation is not a thing of substance; it is "fly by-night", and merely used as a cloak to avoid personal liability. Similarly, in the *National Cash-Register* case (94 Fed. 502), the defendant corporations were organized for the very purpose of infringement, and were mere sham corporations formed by the individuals as a shield for their operations.

The same is true of the other cases cited by petitioner. Certainly there is no analogy between the case of *McCandless* v. *Furlaud,* 296 U. S. 140, cited by petitioner (Br., p. 67), and the case at bar, for there, the individual Furlaud was the "head and front of the conspiracy" perpetrated by various corporations all dominated by him and formed for the particular purpose of defrauding the public.

The Standard Education Society is a substantial corporation and has been in existence since 1909 with varying stockholders, directors and officers. As a matter of fact, the record shows that prior to 1929, the year when testimony was taken, there were a great number of stockholders who were sales directors, managers and field salesmen (R. 406). Since the acts complained of in the complaints (R. 2, 20) covered the five year period from 1924 to 1929 during which time there were many stockholders besides Stanford

and Ward, it is certain that this case presents no instance of a corporation dominated and controlled by one or two men during the times alleged in the complaint.

Clearly, this is not a case where the individuals must be held responsible for the acts of the corporation and the corporation's agents as though the business were conducted by the individuals or as a partnership. The corporation here is a substantial, sound and solvent entity that has conducted a useful business for many years through many men along lawful and legitimate lines. The cases cited by petitioner are distinctly not in point. The Court of Appeals properly excluded Ward, as an individual, from the prohibitions of paragraphs seventh and ninth of the desist order, because there was no evidence to support his inclusion therein.

### *As to Greener and the Incorporation of Standard Encyclopedia Corporation.*

Petitioner's second theory under which it contends that employee Greener as well as Stanford and Ward were properly included in the order is that their inclusion in the order was necessary to prevent evasion. Granted that injunctive decrees should be as broad as necessary to prevent evasion, the theory is utterly fantastic in relation to the present situation. The Commission's Finding 20 (R. 76) is completely the result of its imagination and has no testimony to support it. Petitioner admits (Br., p. 74) that the only "evidence" relative to Finding 20 is Stanford's plausible—and truthful—account of the corporation of the Standard Encyclopedia Corporation under the "not for profit" Illinois eleemosynary statute, all of which belies the Commission's pretended finding.

Although no evidence in the record contradicts what Stanford said, petitioner contends that the Commission had the power to infer that Stanford was prevaricating and that the incorporation of the Standard Encyclopedia Corporation was for the purpose of evading an order about to be issued against the Standard Education Society. Petitioner also contends that such inference cannot be disputed by the Court of Appeals, although the record presents no evidence to support the Commission's finding but only evidence to contradict it.

Surely, when this Court ruled in the *Algoma Lumber* case, 291 U. S. 67, that where there is a great deal of disputed testimony before the Commission, the Court of Appeals must accept the Commission's findings and not weigh the mass of evidence to determine the preponderance thereof, they did not mean to rule that any finding of the Commission, even if depending for support solely upon inference from testimony contradicting the finding, should be controlling upon the Court of Appeals.[16]

The Courts of Appeals are directed by statute to supervise the Commission's proceedings and Congress certainly never intended that the Circuit Court of Appeals should act as a rubber stamp for the Com-

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[16] In the case of *Federal Trade Commission* v. *Pacific States Paper Trade Assn.*, 273 U. S. 52, cited by petitioner (Brief, p. 70), and relied upon by this court in the *Algoma Lumber Co.* case, 291 U. S. 67, 73, the court demonstrated that more than merely "negative" evidence or an inference based thereon is necessary, to support a finding. The facts in the case were stipulated and the court stated (p. 63):

> "The weight to be given to the facts and circumstances *admitted*, as well as the inferences reasonably to be drawn from them, is for the Commission. Its conclusion that the habitual use of the established list lessens competition and fixes prices in interstate territory cannot be said to be without *sufficient* support." (Italics ours.)

mission. This Court has never declared that the Courts of Appeals' role in Federal Trade Commission proceedings is of such a supine nature. To the contrary, the Court has repeatedly asserted the Courts of Appeals' supervisory power over the activities of the Commission.

*Federal Trade Commission* v. *Klesner,* 280 U. S. 19, 27;
*Federal Trade Commission* v. *Raladam,* 283 U. S. 643, 648;
*International Shoe Co.* v. *Federal Trade Commission,* 280 U. S. 291, 299;
*Federal Trade Commission* v. *Gratz, et al.,* 253 U. S. 421, 427;
*Federal Trade Commission* v. *Curtis Publishing Co.,* 260 U. S. 568, 579, 580.

An analysis of the organization of the Standard Encyclopedia Corporation will demonstrate that, as a matter of fact and law, there could have been no basis for the Commission's fear that its incorporation was a device to evade any order that would be issued against the Standard Education Society.

The testimony of Mr. Stanford dispels any sinister motive behind the incorporation of this eleemosynary non-stock corporation. Although the three individual respondents were its incorporators, it was organized for and on behalf of the Standard Education Society, solely for the latter's benefit and corporate use, to meet the need for change in the name of the encyclopedia.

As has been pointed out heretofore (p. 7), in 1929, the two volumes of teacher material were dropped from the Reference Work and the scope of the set was enlarged and expanded to cover strictly encyclo-

pedic matter. It seemed then appropriate to call the work an encyclopedia, and the name, New Standard Encyclopedia was chosen.

It was intended that the name of the corporation would be changed as had been done in 1917 without the necessity of a new corporation. However, as Mr. Stanford explained, because of banking arrangements, this was impossible at that time. The new corporation "not for profit" was therefore incorporated, bearing the name of Standard Encyclopedia Corporation, under the Illinois eleemosynary corporation law.

The new corporation was not an independent financial entity. It was nothing more than a trade department of the Standard Education Society which remained the sole financial and real entity, handled all the sales and business, collected all the accounts and did everything else (R. 405). Not a single word of testimony points to any other purpose. This is conceded by petitioner (Br., p. 74). It is argued, however, that the Commission did not believe Mr. Stanford and that its finding was properly based on this disbelief.

Since the record warrants no justification for the disbelief and Finding 20 is admittedly supported by no affirmative evidence, it is submitted that the finding is erroneous.

Legally, the Standard Encyclopedia Corporation, as an appendage of the Standard Education Society, with no independent existence and organized under the non-profit Illinois statute could not in any event be used to evade an order against the Standard Education Society. Such an order without more, would bind its officers, agents and employees.

*Hutter* v. *De Q. Bottle Stopper Co.* (C. C. A. 2), 128 Fed. 283, 286.

The Standard Encyclopedia Corporation was organized by respondents not as individuals, but as officers of the Standard Education Society and by orders of the latter corporation (R. 404). Obedience to an injunctive order cannot be evaded by a corporation through the incorporation by its officers of another company. The Commission well knows this, for in the case of *Federal Trade Commission* v. *Hoboken White Lead and Color Works, Inc.*, 67 F. (2d) 551. the Second Circuit Court of Appeals at the instance of the Commission, held a New Jersey corporation guilty of contempt when it formed a New York corporation and its New York corporation, having the same stockholders and officers, sold paint under labels which the New Jersey corporation had been ordered to cease using.

Thus, the incorporation of the Standard Encyclopedia Corporation offers absolutely no basis for the evasion fears expressed by the Commission because as a matter of law, evasion was impossible by this device and because as a matter of fact, the new corporation was established for a legitimate corporate reason.

***Greener Merely an Employee.***

The respondent, Greener, who happened to be one of the incorporators of the new corporation, was a mere employee of the Standard Education Society who owned 35 shares of stock of that corporation. An examination of his entire testimony found on less than one page of the record (pp. 426-427) reveals that his position is strictly that of an employee. He was comptroller, auditor and manager of the bookkeeping department (R. 467). He is not a director of either corporation. The testimony is conclusive that al-

though Mr. Greener owned 35 shares of the Standard Education Society stock, his position was that of a chief bookkeeper, and his activities were such as are generally done by the head bookkeeper o. any large corporation and as far removed from the acts alleged in the complaints as possible.

The Commission's desist order was properly reversed as to employee Greener. The incorporation of the Standard Encyclopedia Corporation, under the law and facts did not justify the inclusion of the individual respondents in the Commission's order to cease and desist.

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It therefore conclusively appears that the court below in eliminating Greener entirely from the order and Ward from paragraphs seventh and ninth of the order committed no error.

## POINT THREE.

**The Court's modification of paragraph seventh of the Commission's order was necessary and reasonable.**

[ANSWERING PETITIONER'S POINT V]

The court below, in referring to paragraph seventh, decided that it is proper to list as genuine contributors to a revised work (the present encyclopedia) those who contributed to the basic work (Aiton's Encyclopedia) and they therefore rightly held that this paragraph of the Commission's order which forbade representing anybody as a contributor who was not a contributor, should be "modified or clarified" to exclude from its terms, contributors to Aiton's Encyclopedia, the derivative work of respondents' present publications (R. 490).

The Government evidently agrees that it is permissible so to list contributors, but now argues that the modification was,—"(1) unnecessary, if its purpose was to permit use of the names of contributors to Aiton's Encyclopedia whose work was taken over, and (2) unjustifiable, if its purpose and effect was to permit false representations to be made as to contributors whose work had been entirely eliminated" (Pet.'s Br., pp. 78, 79). That the modification of paragraph seventh was both necessary and justified was demonstrated by the court below.

As to (1)—Contrary to the Government's concession (Pet.'s Br., p. 78), the Commission's findings (Finding 17, pp. 74, 75) indicated that contributors to Aiton's Encyclopedia whose contributions were carried over to the present works could not in its opinion, be correctly listed as contributors to the present works.

Commission's witnesses, Rankin and West, had written extensively for Aiton's Encyclopedia and their material, although revised, still formed parts of the derived work. These two men showed by their testimony, the justification for their inclusion in contributors' listings of the revised publications (R. 260-262, 264-267).

All that the court's modification aims to do is what the Government itself concedes the order should not cover.

Moreover, the Commission, in the court below, argued that these men, although contributors to Aiton's Encyclopedia, and even if their work had been carried over to the present publications, were improperly listed as contributors. Thus, if paragraph seventh had not been modified, the Commission would have believed that the order prevented respondents from

advertising as contributors, writers of material originally in Aiton's Encyclopedia, which remained in the newer editions of the revised work. Since the Commission did not then interpret paragraph seventh as it now does, the court below felt that the modification was, in full fairness to respondents, very necessary and important.

As to 2,—There is nothing in the Commission's findings or in the evidence that gives the petitioner the right to infer that all the work of any contributor to Aiton's Encyclopedia was "dropped completely" from the subsequent revisions, nor does it even "seem clear" as the Government's brief puts it, that "some of it was completely eliminated" (Pet.'s Br., p. 78).

The need for modification and clarification was succinctly and cogently stated and answered by the court's opinion:

> "The seventh clause forbade representing as contributors or editors those who had not contributed to, or edited, the publications. Its propriety depends upon the evidence, and while there is not much of it, it definitely does appear that there was no warrant for claiming at least two, Ballou and Pace, as either contributors or editors. There were, however, a number who had been genuine contributors to 'Aiton's Encyclopedia', but who had done nothing later. How much of this earlier work went into the two later ones cannot be definitely ascertained, but it was the basis of them, and it seems to us not 'unfair' to announce as contributors to the derived work those who had been contributors to the original. This clause ought, therefore, to be modified or clarified by excepting from the prohibition contributors to 'Aiton's Encyclopedia'" (R. 490).

Respondents respectfully insist that the court's modification of paragraph seventh was necessary and reasonable, and affords petitioner no sound basis for complaint.

## POINT FOUR.

**Paragraph eighth with no support in the findings or in the evidence was correctly reversed. Circuit Courts of Appeals are not supposed to be Commission's marionettes.**

[ANSWERING PETITIONER'S POINT V.]

Paragraph eighth was found by the court below to be without support in the testimony and was therefore reversed. This paragraph prohibited the representation that any person had recommended respondents' publications when such was not the fact.

A separate paragraph of the order, paragraph ninth, forbade the use of testimonials which, though really given, had been revised so as to be substantially untrue. The Court of Appeals believed that paragraph ninth was supported by evidence and affirmed it. That decision, we cannot, at this time, dispute. For present purposes, we must assume it to be correct. But the affirmance of paragraph ninth gives no license to petitioner to iterate and reiterate the proscription contained therein and the evidence to support that paragraph as reasons to sustain the unsupported paragraph eighth (Pet.'s Br., pp. 79, 80). The single question under this point must concern only the paragraph reversed, paragraph eighth, the testimony, if any, and the finding pretending to support that paragraph.

The court was compelled to reject the eighth paragraph which was not only unsupported by the Commission's finding, but was void of any testimony to support it. The nearest approach to anything even bordering upon a finding is Finding 15 (R. 73) which presumed to find as a fact that the representations that Paul R. Byrne, O. M. Cope, Stanley L. Clark, J. F. Montague, Charles J. Higgs and Elizabeth Kenney gave recommendations for the New Standard Encyclopedia, are false, deceptive and misleading. But all these persons admittedly recommended and gave testimonials for the Standard Reference Work (R. 466), the immediate predecessor of the New Standard Encyclopedia (which the Commission also found was only "the old Standard Reference Work revised" (R. 74)). Accordingly, the Commission by its own admission had incorrectly found without evidence that the above named persons had not given testimonials, for each of them had positively done so, and was therefore correctly so represented.

As the court stated concerning this paragraph,

> "For the eighth, which forbade the use of such testimonials which had not been given by the person whose name was used, we have been able to find no support in the evidence; and we are referred to none except the conclusions of one, Nixon, which are outweighed by her identification of the handwriting of the person whose name was used" (R. 490, 491).

The Government claims that the court was foreclosed by Section 5 of the Federal Trade Commission Act from weighing this testimony of Miss Nixon's relating to the acts and declarations of her deceased

employer, Mr. Brown, as to matters that happened seven years prior to the taking of testimony. It urges that the court committed grievous error in so doing, and cites the *Algoma Lumber Co.* case as authority for the proposition that the Circuit Courts of Appeals were mere marionettes of the Commission.[17]

It is submitted that this Court has never gone so far as to condemn the Circuit Court of Appeals, in reviewing the acts of the Federal Trade Commission, for refusing to consider hearsay, inadmissible testimony in support of an order.

Miss Nixon's testimony is one of the outstanding examples of hearsay that saturates the record. It is an attempt to make one dead man speak directly contrary to what he wrote in his lifetime endorsing respondents' encyclopedia. (See Respondents' Exhibit 1.) To use such evidence as the only proof to support the eighth clause of the order, puts the finger of unfairness upon the Commission's exaggerations in no uncertain terms. Since this legally inadmissible testimony was the only testimony in support of paragraph eighth, the court below, with entire propriety, reversed the paragraph and declared that they could find no evidence to support it. An order to cease and desist cannot, of course, be binding unless supported by findings based upon legally admissible testimony.

*Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568;
*International Shoe Company* v. *Federal Trade Commission*, 279 U. S. 832;
*Arkansas Wholesale Grocers Ass'n.* v. *Federal Trade Commission*, 18 F. (2d) 866, 871.

[17] This question is discussed *supra* (p. 48), where it is shown that the *Algoma Lumber* case is not authority for such a principle.

## *Conclusion.*

It has been conclusively established that the court below properly reversed paragraphs One and Three of the Federal Trade Commission's order to cease and desist, because the combination, "free on condition" sales method is not an unfair method of competition in commerce. No error was committed by the court in excluding employee Greener entirely from the order, and Ward from the Seventh and Ninth paragraphs, for lack of any evidence to support their inclusion. Paragraph Eighth was properly reversed because there is no evidence in the record to sustain it. Further, the modification of paragraph Seventh was reasonable and necessary.

***Petitioner therefore has no just complaint in so far as the desist order was modified. It is respectfully submitted that the Court should affirm those parts of the decision of the Court below under review at this time.***

HENRY WARD BEER,
*Counsel for Respondents.*

October, 1937.

## Appendix.

The Appendix contains the eight following representative prevailing "combination" advertisements, offering to give one article away "free" on condition that the customer buy another article:

(1) Life, August 23, 1937—To get "The Decameron" *free,* a customer must agree to *purchase* twelve books for one year at $1.69 a book and join the De Luxe Editions Club.

(2) New York Post, March 27, 1936—The bookcase is given *free* with *purchases* of $9.95 or more.

(3) New York Times, September 13, 1936—To receive "Seven Pillars of Wisdom" *free,* a person must join the Book-Of-The-Month Club which obligates him to *purchase* at least four books during the ensuing year.

(4) Drug Topics, September 13, 1937—Zonite offers the measuring glass *free,* if one *buys* a bottle of Zonite.

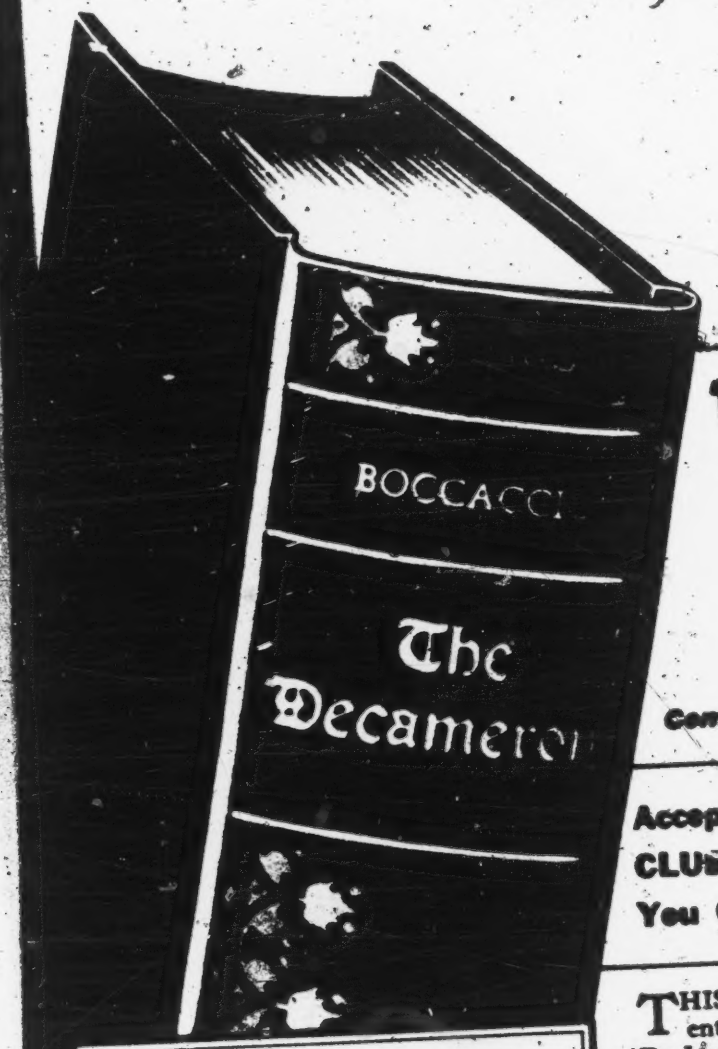
(5) Saturday Evening Post, April 25, 1936—A *purchaser* gets a moth bag *free* if he *buys* a pint can of Flit.

(6) Saturday Evening Post, April 25, 1936—Masland gives a rug *free* with every *purchase* of a room size rug.

(7) The Digest, August 28, 1937—To receive "The World and Man" *free,* a reader must join the Literary Guild of America and agree to *purchase* a minimum of four books a year.

(8) New York Evening Journal, May 27, 1936—A *free* bungalow is given away to each subscriber who *purchases* four lots and pays $96.50 for each lot or a total of $386.

Life August 23, 1937




# Free

## THIS FAMOUS DE LUXE EDITION OF THE DECAMERON

*Printed from the Plates of the $17.50 Private Edition*

*Complete and Unabridged—Over 600 Pages—16 Illus. in Full Color and Gold*

**Accept This GIFT Volume as an Example of DE LUXE EDITIONS CLUB Bargains—Great Books Like This, Formerly $5 to $25, Which You Can Now Get in Exquisite New Editions for ONLY $1.69 Each!**

THIS magnificent volume is being sent entirely free to new members of The De Luxe Editions Club. Membership will also bring you, each month, a striking new De Luxe Edition of a great book formerly priced at $5 to $25—for the one *standard price* of only $1.69 each! Furthermore, Charter Memberships in the Club are still open and new members need pay *nothing* to join!

Ten thousand other people have already joined the Club. As a Charter Member you pay no dues or assessments of any kind. You receive a free subscription to the magazine published for Members exclusively. And you are *guaranteed*, during your membership, against any increase in price.

The books you will receive are not quickly-forgotten novels. They are works of outstanding interest and lifelong worth. Books which will become "foundation books" in the thoughtfully planned, constantly growing library you have always longed to acquire. Books of lasting importance, representing a liberal education in particular subjects of endless fascination—sumptuous editions of famous works on literature, art, music, history, science, travel.

### America's Greatest Fine Book Bargains

Throughout the country, De Luxe Editions Club books are already famous for their luxurious bindings, rich contents, permanent value. In size they average 6" x 9¼". Frequently they are even larger. Their pages, numbering from 500 to 600 to often over 1000, are in many cases gorgeously illustrated in color with paintings by the foremost artists; at other times with fine drawings and photographs. And every volume is *complete, unabridged*.

How are such values possible? Only because America's leading publishers are allowing the Club to use the *original*, first-edition plates of modern books—or, as in the case of "The Decameron," the plates of special, private editions. And contemporary authors have agreed to smaller royalties.

What are a few typical examples of these remarkable values? Recent De Luxe Editions have included such bargains as "Great Works of Art," *formerly $5.00*; Chaucer's "Canterbury Tales," in modern English, and with 25 full-page drawings in color by Rockwell Kent, *formerly $25.00*; "The Book of Old Ships," illustrated by the famous marine artist Gordon Grant, *formerly $20.00*; and "Stories of the Great Operas," *formerly in three volumes at $10.50*. Similar values will be offered in coming months—*all* at the standard low price (guaranteed to Members only) of $1.69 each, plus few cents postage.

### SEND NO MONEY

We believe that you, like ten thousand others, will be glad to acquire a beautiful library of de luxe books at such remarkable savings. Surely you, too, wish to build up a permanent collection of volumes that will delight you always, and inspire your children in the years to come. Therefore we invite you to accept, free, a Charter Membership in The De Luxe Editions Club!

Send no money with the Special Gift-Book Coupon Below. Your *free* copy of "The Decameron" will be sent to you at once. With it will come the current month's bargain selection and the current issue of the Club's "Folio" a monthly magazine of interest to all book-lovers. "The Folio" is free to Members only. Each month it tells unusual facts about the current Book Selection. And it reviews the coming month's selection as well. Thus Members always know in *advance* what the next book will be. Your subscription for "The Folio" will begin at once, without cost. Mail the coupon below!

**THE DE LUXE EDITIONS CLUB**
**Dept. 8L Garden City, N. Y.**

## THE DECAMERON.

*of Giovanni Boccaccio*

*Translated by Richard Aldington*

*With 16 Superb Plates in Full Color and Gold*

*by the celebrated French artist Jean de Bosschere*

A supremely beautiful De Luxe Edition of one of the most famous books ever written. "THE DECAMERON"—which for nearly six centuries has towered as a peak of man's story telling.

The hundred tales spun in these pages by seven Florentine ladies and three youths are among the most fascinating in all literature. Shakespeare borrowed plot after plot from them. The clear, vivid style of their telling is as crisp today—and as widely imitated—as ever. And in this brilliant translation of Boccaccio's text you have a book which we believe will be unsurpassed in beauty, in lifelong interest, by any other in your library.

This edition, printed from the plates hitherto available only in a privately printed edition at $17.50, presents a careful and complete version of "THE DECAMERON." Lavishly illustrated with 24 full-page plates—16 of them in full color and gold. Size 6½" x 9½"—608 pages. Richly bound in De Luxe black silk pattern vellum, stamped in gold, with stained page tops. One of the most sumptuous books this Club has ever issued. And you may now have it FREE!

## SPECIAL GIFT-BOOK COUPON

**THE DE LUXE EDITIONS CLUB**
**Dept. 8L, Garden City, N. Y.**

I wish to join The De Luxe Editions Club. In consideration of my enrollment as a Charter Member at this time, you are to send me at once, absolutely free, my gift copy of "THE DECAMERON."

My membership will bring to me each month for an entire year the Club's De Luxe Selection—a book that formerly sold for $5.00, $10.00, or even more but which I am to have for only $1.69 plus the few cents postage.

You are also to send me each month the members' exclusive publication, THE FOLIO, which reviews the current and forthcoming selections.

Name

Address

City State

New York Post, March 27, 1936.

# HWARZ SCOOPS THE CITY!

## Your Choice! Of Either of These Handsome Bookcases for Your Dickens Set!

**FREE**

Exceptionally Stocked in
MAPLE • WALNUT • MAHOGANY
After Regular Hours Mar. 28th

★★
TWO STAR

ONE [illegible]

With every purchase of 9.95 or over you are entitled to a FREE BOOKCASE. Cut out the coupon (printed to the right), fill in your name and address and present it to the salesman who serves you. Be sure to specify the finish you want—Maple, Walnut or Mahogany. The bookcase will be shipped to you with your order.

# Zonite Offers ft FREE

## 6 OZ. AND 14 OZ. ZONITE

**High-Powered Advertising—44,055,238 Coverage**

# FREE... FOR YOUR LIBRARY

**—a book which until last year was available only in privately printed copies valued at $20,000 each. Unabridged and identical with the original text is this special edition of the famous**

# SEVEN PILLARS OF WISDOM

## BY T. E. LAWRENCE

## WHY WE OFFER TO GIVE YOU A FREE COPY OF THIS BOOK...

BOOK-OF-THE-MONTH CLUB, Inc.
386 Fourth Avenue, New York, N. Y.

PLEASE send me without cost, a booklet outlining how the Book-of-the-Month Club operates. This request involves me in no obligation to subscribe to your service. It is understood that if I decide to join I will receive a free copy of SEVEN PILLARS OF WISDOM.

Name

Address

City State

Business Connection (if any)

Official Position or Occupation

(Residents of Canada, members through Book-of-the-Month Club of Canada, Ltd.)

THERE is no reader of the *New York Times* who would not find it in many ways to his advantage to subscribe to the service of the Book-of-the-Month Club; and we make this extraordinary offer in order to demonstrate that this is the case.

What we here propose is this: mail the inquiry coupon, *and a copy of this free library volume will be put aside in your name*, and held until we hear whether or not you care to join. In the meantime, a booklet will at once be sent to you outlining how the Club operates.

Study this booklet at your leisure; you may be surprised, for instance, to learn that belonging to the Club does not mean you have to pay any fixed sum each year; nor does it mean that you are obliged to take one book every month, twelve a year (you may take as few as four); nor are you ever obliged to take the specific book-of-the-month selected by the judges. You have complete freedom of choice at all times. You also participate in the Club's "bonus dividends," which are valuable library volumes like the SEVEN PILLARS OF WISDOM. In 1935, the retail value of the books distributed free among Club members was over $1,250,000. For every two books its members purchased, they received on the average one book free.

If, after reading the booklet referred to, you decide to join the Club, a free copy of SEVEN PILLARS OF WISDOM will at once be dispatched to you.

Here is a very interesting fact: over 125,000 families—composed of discerning but busy readers like yourself—now get most of their books through the Book-of-the-Month Club; and of these tens of thousands of people *not a single one was induced to join by a salesman*, every one of them joined upon his own initiative, upon the recommendation of friends who were members, or after simply reading —as we ask you to do—the bare facts about the many ways in which membership in the Club benefits you as a book reader and book buyer.

# YOU GET ONE OF THESE RUGS

*with every purchase of a room-size*

## MASLAND ARGONNE RUG

### 2 Rugs for the Price of 1

FREE OFFER: Anyone who purchases a 9 x 12 ft. Argonne Rug, on or before May 2, 1936, from any dealer participating in our Jubilee Celebration will receive with the store's compliments one of the Argonne Rugs at right. (Size—6½ x 9 ft. Verified value $3.95.) Here's the rug "buy" of the year! But act quickly! May 2 is the deadline

all who buy one of these famous rugs. When you buy your room-size Argonne (at most one cent more than the regular price), the Masland dealer will give you the smaller rug with his compliments. Those of you who already know Argonne value will recognize this as an offer that comes once in a blue moon.

"To you new friends, here are some things you should know about the Argonne. It's made of fine quality sugar weed. It has a skid-proof back and the corners are guaranteed not to curl. It's shed-proof too, the tufts are 'pile-locked'

FREE
TO NEW MEMBERS OF THE LITERARY GUILD—

# THE WORLD AND MAN
## AS SCIENCE SEES THEM

Edited by ROBERT RAY HOSKINS

Thousands of Questions Like These —Answered!

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the other books you want or have read. The latest additions to human knowledge, the most recent interpretations of the ordinary things about us, life's mystery... All this is yours absolutely free!

## Guild Membership Is FREE

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## SUBSCRIBE NOW

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Literary Guild of America
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New York, N.Y.

Mail This Card Today! FREE—"The World and Man"

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City ..... State .....

Occupation .....

Canadian Subscriptions will be given to the Literary Guild in Canada, 105 Bond St., Toronto, Canada.

New York Evening Journal, May 27, 1936.

One of the Greatest Offers Ever Made by a

# DAILY NEWSPAPER

For the Purpose of Securing New Readers!

*By Subscribing for 3 Months to*

# The Brooklyn Citizen

*Brooklyn's Outstanding Home Newspaper*

**YOU CAN SECURE A BUNGALOW SITE AT MASTIC BEACH FOR**

**$96.50 FULL PRICE,** DOWN PAYMENT **$12.50** Per Lot. PAY MONTHLY **$3.50** Per Lot.

ALL LOTS ONE PRICE—NONE HIGHER

*No Finance Charges . . . No Carrying Charges . . . No Interest*

*AND*

## This Newspaper Will Give Away

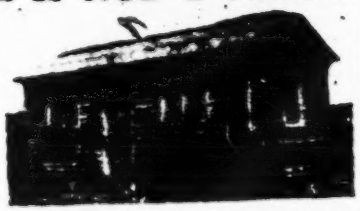
## 3-ROOM BUNGALOWS *FREE*

*to EACH Subscriber who purchases 4 or more lots at the regular subscription price of $96.50 each. It will be built for you FREE on your lots.*

**JUST IMAGINE . . . A DREAM COME TRUE!**

**And Remember, This Is *NOT* a Contest**

**Every New Subscriber Purchasing 4 or More Lots Can Have One of These Bungalows FREE!**



YOU DON'T PAY A SINGLE PENNY FOR THIS BUNGALOW

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DEC 9 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

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# No. 14

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FEDERAL TRADE COMMISSION,
*Petitioner,*

*vs.*

STANDARD EDUCATION SOCIETY ET AL.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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## PETITION FOR REHEARING.

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HENRY WARD BEEB,
*Counsel for Petitioner.*

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# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1937

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---

## PETITION FOR REHEARING.

---

Now come the respondents and present this, their petition for a rehearing of the above entitled cause, and in support thereof respectfully show the following, which respondents believe are substantial errors of this Court, as shown from its opinion:

I.

**The Supreme Court has directed the enforcement of clauses one, three and seven of the Commission's order without evidence of disobedience and contrary to the due process of law provided by the terms of the statute.**

II.

The Supreme Court improperly supported its interdiction of clauses one and three of the Commission's order because it believed them connected as parts of a plan with clauses two and six of the order. But clauses two and six had been affirmed below and were not before the Court since no appeal was, or could be taken from their affirmance.

III.

The lower court's modification of clause seven was proper in face of the Commission's contention at that time and in view of the state of the record. This Court's criticism and reversal of the modification appears to have been unnecessary and unjust to the Circuit Court.

IV.

The Supreme Court, respondents believe, erroneously found that clause eight of the order was supported by testimony.

V.

The Supreme Court, in reversing the lower court's ruling as to the individuals, respondents believe, overlooked the fact that the Commission's finding, that the new corporation was organized to evade any order that might be issued against the original corporation, was not based on any testimony.

I.

**The Supreme Court Has Directed the Enforcement of Clauses One, Three and Seven of the Commission's Order Without Evidence of Disobedience and Contrary to the Due Process of Law Provided by the Terms of the Statute.**

The Court in its opinion (82 L. Ed. 48, 50, 51) in directing that clauses 1, 3, and 7 of the Commission's desist order should be affirmed by the court below, also directed that these clauses be *enforced*. Respondents believe that this direction may have been inadvertently made, since in discussing the only other clause under review, clause 8, this Court merely reversed the lower court and said nothing as to *enforcement*. However, in thus ordering *enforcement* of the three aforementioned clauses, before there was *any* proof of violation of the Commission's cease and desist order, the Court apparently nullifies the relevant portions of Section 5 of the Federal Trade Commission Act, and overrules the decisions of several circuit courts of appeals, and limits the application of a decision of the Supreme Court in a case analogous in principle to the instant case.

The Commission in its application to the court below, prayed that the court (1), affirm its order and (2), decree its enforcement (R. X).

The relevant part of Section 5 of the Federal Trade Commission Act is as follows:

> "If such person, partnership, or corporation *fails* or *neglects* to obey such order of the Commission while the same is in effect, the Commission may apply to the circuit court of appeals of the United States, * * * for the enforcement of its order, * * *." (15 U. S. C., § 45.) [Italics supplied.]

The statute thus provides, as a condition precedent to the application by the Commission for the affirmance and enforcement of its order, that the cease and desist order

shall have been violated. The order must first be vitalized by the power of the Circuit Court of Appeals before enforcement can be considered.

The question of disobedience of a valid order is one of fact and since disobedience was put in issue by respondents in the instant case (R. XIII), each respondent is separately entitled to be given an opportunity to answer the Commission's proof of disobedience and to submit its own proof at a proper hearing. Such a hearing was provided for by the court below when it appointed the Commission as master to take testimony with regard to the portions of the order it affirmed (R. 495).

The court below in the case of *Federal Trade Commission* v. *Balme,* 23 F. (2d) 615, decided that, where the Commission seeks to *enforce* its order in a proceeding initiated by itself and an issue is raised as to the violation of the order, the Court must first determine whether there has been a violation of law. That, if the order does not represent a violation of law, the Circuit Court will dismiss the Commission's application and reverse the order. That, should the Court determine there has been a violation of law, it will affirm the order and then send the question as to disobedience of the order back to the Commission for testimony and findings as to the fact thereon. That enforcement will be decreed *only* if the Court is satisfied from these later findings of the Commission, made at the direction of the Circuit Court subsequent to its affirmance of the order, that the order was violated. To decree *enforcement,* where, as here, the respondents have asserted obedience and where there is no proof or finding in the record of disobedience of the order, is contrary to the clear mandate of the statute. The court below in the *Balme* case, *supra,* stated (p. 618):

> "Manifestly, it is very apparent that the question of violation of the Commission's order would not be

involved until a valid order was recognized by this court after having acquired jurisdiction. Therefore we must first examine the proceeding before the Commission and determine whether there has been a violation of the law. Until then, no good purpose can be served for determining disputed questions of fact as to a violation of the order. The statute does not impose any penalty for violation of the Commission's order, and the order is not binding until vitalized by the power of this court to punish for contempt, when the court shall have entered a decree affirming the order and commanding permanent obedience thereto, and it is not until the Commission presents a case of justifying the charge of violation that action will be taken to punish. It is then, and not until then, that the question of fact as to violation of order, becomes a proper issue to be determined by the court."

In *Federal Trade Commission* v. *Baltimore Paint & Color Works, Inc.*, 41 F. (2d) 474, the Circuit Court of Appeals for the Fourth Circuit, citing the *Balme* case (*supra*) said (p. 476):

"We agree with the conclusion of the Circuit Court of Appeals of the Second Circuit, in case of Federal Trade Commission *v.* Balme, *supra*.

"This court has no machinery for investigating or ascertaining the fact as to the compliance or noncompliance with an order of the Commission. The Commission has such machinery and is the proper body to pass upon that question.

"It is therefore the conclusion of the court that the order of the Federal Trade Commission, requiring the respondent, Baltimore Paint & Color Works, Inc., to cease and desist from certain practices found by the Commission to constitute unfair methods of competition, be, and the same is, affirmed. The question of the violation of the order, the enforcement of which is asked in the petition, is referred to the Federal Trade Commission, with opportunity for the respondent to

answer and submit proof, and with direction to the Commission to report its conclusions to this court."

Following this settled procedure, the court below in the case at bar, correctly refused to enforce the affirmed parts of the desist order but remanded the cause to the Federal Trade Commission as Special Master to report back to it whether the affirmed portions had been violated (R. 495). The Circuit Court thus accorded to respondents their statutory rights to a hearing on the question of disobedience.

To deprive respondents of their statutory rights to the hearing which must precede a decree of enforcement constitutes a denial of the due process of law provided by the statute. Such a decision by the Court is in serious conflict with *Morgan* v. *United States*, 298 U. S. 468, 477, where this Court held that a rate order by the Secretary of Agriculture, under the Packers and Stockyards Act of 1921 [1] was void because the requirement in the statute of a "full hearing" had been denied, and cited in support of its decision: *Interstate Commerce Commission* v. *Louisville & N. R. Co.*, 227 U. S. 88; *United States* v. *Abilene & S. R. Co.*, 265 U. S. 274; *Florida* v. *United States*, 282 U. S. 194; *United States* v *Baltimore & O. R. Co.*, 293 U. S. 454.

The Supreme Court apparently further failed to note that the Commission did not seek from this Court the enforcement of its order. Although the Commission, in the petition for certiorari (pp. 11, 12), had first specified as error, the action of the court below in refusing to decree enforcement, in its brief to the Court, the Commission abandoned this as an error and, by the abandonment, in effect, conceded the propriety of the lower court's procedure. Indeed, the Commission's acquiescence is patent from the fact that contrary to its prayer to the court be-

[*Footnote*] [1] 42 Stat. at L. 159, 166, Chap. 64, § 310; U. S. C. A., Title 7, § 211.

low (R. X), the Commission here only asked that its desist order be affirmed (Comm.'s brief, p. 83). The Commission did not ask this Court to enforce the order because enforcement under the statute is unwarranted at this time.

It seems to us undebatable that had the court below affirmed the additional parts of the desist order now affirmed by this Court, it would not have decreed their enforcement, but would have demanded proof of their violation in accordance with the statute.

Since the record is void of any evidence or finding that any part of the Commission's order has been violated from the time it was entered in 1931, and, since *enforcement* of the order was not before this Court, *enforcement* is, at this time premature and has been improperly ordered.

To hold that *enforcement* shall *now* be decreed by the court below without a hearing in effect nullifies the statute. It is not believed that the Court intended to give such a drastic direction. A literal reading of the Court's opinion seems to leave no alternative.

Therefore, the direction to the Circuit Court of Appeals in the opinion should, respondents submit, be modified to eliminate the reference to *enforcement*. Otherwise, the result in the court below may be that some clauses of the order will have to be presently enforced (*i. e.*, 1, 3 and 7), without taking testimony as to whether they have been violated, while others (2, 4, 5, 6, 8, 9 and 10) are affirmed and await the finding of the Commission as Special Master on the question of disobedience before enforcement can be decreed. Such a result would be manifestly illogical, unjust and directly contrary to the mandate from Congress.

It is of the utmost importance to respondents that this matter be clarified, for although punishment for contempt cannot follow the violation of the Commission's order, a violation of a decree of the court commanding obedience subjects the transgressor to punishment as for a contempt.

## II.

**The Supreme Court Improperly Supported Its Interdiction of Clauses One and Three of the Commission's Order Because it Believed Them Connected as Parts of a Plan With Clauses Two and Six of the Order. But Clauses Two and Six Had Been Affirmed Below and Were Not Before the Court Since No Appeal Was or Could be Taken From Their Affirmance.**

By reason of the Supreme Court's consideration of clauses two and six of the desist order in reversing the lower court's ruling which had held that the "free" representation of clauses one and three was not unfair, and the positive emphasis placed on them, the Court disregarded the substantial rights of respondents. Clauses two and six had been affirmed by the Court of Appeals and were not before the Court (R. 494). Respondents had taken no appeal from the rulings adverse to them. As a matter of law, no appeal was possible since the lower court had not rendered a final judgment as to the clauses affirmed, but had ordered that the cause be held in abeyance awaiting the further findings of the Commission (R. 495).

Furthermore, in the Commission's petition for the writ of certiorari, the sole basis of this Court's review, nothing was said as to clauses two and six. Review was there sought of the lower court's reversal of clauses one and three. The question presented concerned itself only with the issue of whether the "free on condition" representation prohibited in clauses one and three was, independently and by itself an unfair method of competition.

Notwithstanding that the lower court had ruled adversely to respondents in affirming clauses two and six, and that respondents had taken no appeal from this ruling, and despite the further fact that the petition, upon which the writ of certiorari was granted, is entirely devoid of any

reference to clauses two and six, the Court used clauses two and six as the basis for its decision condemning clauses one and three. Thus, the Court stated:

> "It is clear both from the findings of the Commission and the testimony upon which they rest, that the practices forbidden in clauses one, two, three and six are all tied together as parts of the same sales plan." 82 L. Ed. 48, 49.

It is inescapable from the foregoing that clauses one and three were held unfair by the court because, in its opinion, these clauses were tied together with clauses two and six. But, this Court was without power to consider the affirmed clauses two and six which had not been appealed and therefore could not be before the Court. The Commission itself, in its brief, admitted, at page 17 that:

> "To the extent that the Commission's order was affirmed by the court below, (*inter alia,* clauses two and six) it is, of course, not now before the court." (Parenthetic matter added.)

The Court apparently overlooked the fact that clauses two and six were not and could not be before them. It is submitted that the Court erred in employing these two paragraphs as an indispensable means to support its interdiction of clauses one and three. It thereby, in effect, amended the order of the Commission and condemned clauses one and three as part of a plan which was not before this Court, the court below or the Commission.

## III.

**The Lower Court's Modification of Clause Seven Was Proper in Face of the Commission's Contention at That Time and in View of the State of the Record. This Court's Criticism and Reversal of the Modifications Appears to Have Been Unnecessary and Unjust to the Circuit Court.**

The Government in the court below, in its reply brief (p. 12) and in oral argument, contended, in support of clause seven, that to publish, as contributors to the revised work, the names of contributors to Aiton's Encyclopedia "was false and misleading and unauthorized", *even though the matter contributed by them was brought forward in the revised work.*

Obviously, this contention of the Government in the court below caused the Court to modify clause seven so that the order would not prevent respondents from representing a person, who contributed to the original, as a contributor to the revised publication.

After having caused this modification, the Government in its brief before the Supreme Court withdrew its said contention. It conceded to the contrary that clause seven did not prevent the representation of a person, as a contributor to the revised work, who had contributed to Aiton's Encyclopedia and some of whose material was carried forward to the revised work. However, the clause seven, as modified by the court below, was nothing more than the original clause embodying the concession later made in this Court by the Government.

So far, there was no cause shown for the criticism and reversal by the Supreme Court of the action of the Circuit Court in modifying clause seven of the desist order.

But, Mr. Justice Black, in the opinion of the Court, further says (82 L. Ed. 48, 51):

> "If no part of his contribution to Aiton's encyclopedia has been brought forward, he is not a contributor and should not be represented as such. * * * The decree of the court below modifying this clause is not in accordance with our conclusion, * * *."

This statement of the Court indicates that the Court believed there was evidence that persons who had contributed to Aiton's encyclopedia were represented as contributors to the revised work, although "no part of his contribution had been brought forward", and that the modified clause permits respondents to list, as contributors to the revised publication, the names of such original contributors to Aiton's encyclopedia, whose material was not carried over to the revised work.

There was no basis for such belief on the part of the Court. There was no evidence at all in the record before the court below showing that all the material furnished by any of the writer's to Aiton's encyclopedia was omitted from the revised publication with which their names were associated.

In modifying clause seven, it would have been improper for the court below to have provided for the restraint of any practice that had never been shown by evidence to have been employed. In modifying clause seven the Circuit Court was justified in excepting from the prohibition the contributors to Aiton's encyclopedia.

The reversal of the Circuit Court's modification of clause seven appears to have been ill considered and unnecessary and contrary to the rule followed by this Court to decide moot questions. The lower court's modification was proper and necessary and should not have been reversed by this Court.

## IV.

**The Supreme Court, Respondents Believe, Erroneously Found That Clause Eight of the Order Was Supported by Testimony.**

The Supreme Court in its opinion states of the eighth clause:

> "We are convinced that the Commission's findings of fact justified this clause of the order and that the testimony supports these findings." (82 L. Ed. 48, 51.)

The testimony shows that each of the men and the sole woman referred to in the finding of the Commission, which is quoted in a footnote to the Supreme Court's opinion, actually gave testimonials for the Standard Reference Work, the same publication as the New Standard Encyclopedia, the works differing only in name (R. 466).

The Commission found that the New Standard Encyclopedia "is the old Standard Reference Work revised" (R. 74).

This finding of the Commission is in the same numbered finding from which the Court quotes in the footnote of its opinion (82 L. Ed. 48, 51).

The Circuit Court said of these testimonials that there was no proof offered that these testimonials were not authorized, saying (R. 490):

> "For the eighth, which forbade the use of such testimonials which had not been given by the person whose name was used, we have been able to find no support in the evidence; and we are referred to none * * *."

Since, therefore, the only testimony of unauthorized testimonials are of those which were used as above for the New Standard Encyclopedia found by the Commission to be the

Standard Reference Work revised when they had been given for the latter work, the Circuit Court's opinion and conclusion that the Commission's findings are unsupported by any testimony at all appears to be correct. We submit that the Supreme Court was in error in holding that there is evidence to support clause 8 and in overlooking the Commission's admission in its findings at page 74 of the record which, we submit, justified the use of the testimonials given by the persons referred to in the Court's footnote, and that the Circuit Court's decision in this respect should have been sustained.

## V.

**The Supreme Court, in Reversing the Lower Court's Ruling as to the Individuals, Respondents Believe, Overlooked the Fact That the Commission's Finding, That the New Corporation Was Organized to Evade Any Order That Might be Issued Against the Original Corporation, Was Not Based on Any Testimony.**

Respondents respectfully submit that the Court committed serious error in deciding that respondent Greener was improperly excluded entirely from the operation of the order, and that respondent Ward was excluded from the operation of paragraphs seven and nine of the Commission's order, and in holding that "There was ample support in the testimony" to support the Commission's finding that the individual respondents had organized the Standard Encyclopedia Corporation "for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent, the Standard Education Society" (82 L. Ed. 48, 51).

There is in the record absolutely no testimony to support the Commission's finding as to the purpose of the organization of the new corporation. The only testimony on this important point is that given by Stanford in which, as the Government itself states in its brief (p. 74), he "explained that the new corporation was organized for a legitimate purpose."

Despite the fact that there was no testimony contradicting Stanford, the Commission found as a fact that the new corporation was formed to evade the operation of its order. Inasmuch as there was no other testimony or evidence in the record in this respect, except the testimony of Stanford himself, there was clearly no basis in fact, or even for an inference to support the Commission's finding.

The Court of Appeals correctly disregarded this finding upon which the Supreme Court based its decision since in the opinion of the lower court, the finding had nothing in the record to support it. The statute, Section 5 of the Federal Trade Commission Act, declares that the Commission's findings shall be conclusive only where they are supported by testimony. The finding in question was not conclusive because not supported.

The Supreme Court, in relying upon the Commission's finding, apparently misconstrued the facts and circumstances surrounding the incorporation of the Standard Encyclopedia Corporation. This new company was incorporated under the Illinois eleemosynary corporation statutes with no separate existence apart from the original corporation. It was merely used as a trade department to meet the need for change in the name of the encyclopedia (R. 404, 405). The new company was organized by the three individual respondents, Stanford, Ward and Greener not in their individual capacities, but as officers and employees of the Standard Education Society solely for the latter's benefit and corporate use. Under such conditions, the Commission's finding was clearly unfounded. The utter legal or physical impossibility of using such a corporation to assist the Standard Education Society in evading an order of the Commission seems to have been ignored by the Supreme Court.

Greener, moreover, was merely an employee of the Standard Education Society and his inclusion in the operation of the order was urged by the Government solely on the ground that he happened to be an incorporator of the new corporation. It was not contended that Greener had done anything relative to the practices involved. The lower court therefore properly excluded Greener from the order because he actually was in no way connected with the practices condemned in the order.

The lower court also eliminated Ward from the operation of clauses seven and nine because it was not shown that he was in any way connected with the practices prohibited in these two clauses.

Clearly, since the evasion fears of the Commission were unwarranted, the Supreme Court, it is submitted, erroneously reversed the lower court's rulings as to respondents Greener and Ward.

## Conclusion.

For the foregoing reasons respondents respectfully represent and hope that the Court will grant their petition for rehearing in order that the rights of the respondents may not be seriously prejudiced, which include among others, the right to a hearing given by the Federal Trade Commission Act to determine whether they have disobeyed the order of the Commission, as a condition precedent to its enforcement. To deny such hearing deprives respondents of the due process of law provided by statute.

Dated: December, 1937.

Respectfully submitted,

HENRY WARD BEER,
*Attorney for Respondents.*

I, Henry Ward Beer, counsel for the respondents, do hereby certify that the foregoing petition for a rehearing in this cause is presented in good faith and not for delay.

HENRY WARD BEER.

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1937**

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## No. 14

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FEDERAL TRADE COMMISSION,
*Petitioner,*

*vs.*

STANDARD EDUCATION SOCIETY, ET AL.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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# MOTION TO AMEND OPINION AND TO RECALL AND AMEND MANDATE.

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HENRY WARD BEER,
*Counsel for Respondents.*

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1937**

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## No. 14

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FEDERAL TRADE COMMISSION,

*Petitioner,*

*vs.*

STANDARD EDUCATION SOCIETY ET AL.

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**NOTICE OF MOTION TO AMEND OPINION AND RECALL AND AMEND MANDATE.**

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*To Hon. Stanley Reed, Solicitor General of the United States:*

Please Take Notice that the within motion to amend opinion and recall and amend the mandate, a printed copy whereof is herewith served upon you, will be submitted to the Supreme Court of the United States, Henry Ward Beer, counsel for respondents, on the 3rd day of January, 1938 or as soon thereafter as counsel can be heard.

Dated December 23, 1937.

Henry Ward Beer

HENRY WARD BEER,
*Counsel for Respondents.*

Service of a copy of the within motion acknowledged this — day of ——.

——,
*Solicitor General.*

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1937

## No. 14

FEDERAL TRADE COMMISSION,
*Petitioner,*

*vs.*

STANDARD EDUCATION SOCIETY ET AL.

## MOTION TO AMEND OPINION AND TO RECALL AND AMEND MANDATE.

Now come Standard Education Society, Standard Encyclopedia Corporation, H. M. Stanford, W. H. Ward and A. J. Greener, the respondents in the above entitled cause, and by their counsel Henry Ward Beer move this Court to amend its opinion and to recall and amend its Mandate issued in said cause on December 8, 1937, to the Circuit Court of Appeals for the Second Circuit and filed in said Court on December 9, 1937, in the certain particulars set forth below; and in support thereof respectfully show:

On December 21, 1936, the Circuit Court of Appeals for the Second Circuit entered a decree reversing in part and affirming in part a cease and desist order of the Federal Trade Commission, restraining the respondents from

certain sales practices in interstate commerce (R. 493). The parts of the desist order which were affirmed by the court below were remanded to the Federal Trade Commission as Special Master to report whether respondents had complied with the sustained provisions (R. 495). Pending the report of the Federal Trade Commission as Special Master, the cause was held in abeyance by the court below and no enforcement was decreed (R. 495).

The Federal Trade Commission, feeling aggrieved by reason of the lower court's reversal of certain specific paragraphs of its desist order (paragraphs 1, 3, 7 and 8) applied to this Court for a Writ of Certiorari. This Court granted certiorari and on November 8, 1937, delivered its opinion through Mr. Justice Black, reversing the decree of the court below in so far as it had refused to uphold the paragraphs 1, 3, 7 and 8 of the Commission's desist order. It also reversed the lower court's ruling as to the individual respondents (82 L. Ed. 48).

On December 3, 1937, respondents filed with this Court a petition for rehearing. This petition was denied December 20, 1937.

While the petition for rehearing was pending, the mandate of the Supreme Court had issued, in conformity with Supreme Court Rule No. 34, to the Circuit Court of Appeals for the Second Circuit and an order has been entered thereon in said Circuit Court which merely recited that the decree of the Circuit Court had been modified in conformity with the opinion of the Supreme Court.

In the aforesaid petition for rehearing, respondents had urged as one of their principal grounds requiring a rehearing that the Supreme Court in its opinion had apparently inadvertently erred in directing that clauses 1, 3 and 7 of the Commission's order should be "*enforced*" as well as "affirmed" (pp. 3-7 pet. for rehearing). As to Clause 8,

the only other clause under review, no such direction for enforcement was made by this Court.

It is respondents' contention that *enforcement* of the Commission's order is at this time unauthorized by, and contrary to, Section 5 of the Federal Trade Commission Act because respondents had denied disobedience of the Commission's order, and no proof had been taken to show violation.

We believe ~~Believing~~ that the direction of this Court as to the enforcement of Clauses 1, 3 and 7, some of the affirmed parts of the Commission's desist order, is not only contrary to Section 5 of the Federal Trade Commission Act but is in addition, ambiguous, inconsistent and not informative to the lower court as a guide for its further action.

The court below, moreover, is not advised whether the other clause under review, clause 8, should be regarded as having been affirmed or enforced. No clear direction was made in the Court's opinion, the Court having merely "reversed" the lower court's decree in this respect. The Circuit Court will have to attempt to decide whether clause 8 shall be remanded to the Federal Trade Commission for a report on violation or whether it must, to conform with this Court's opinion, decree enforcement of clause 8 as well as clauses one, three and seven.

It is respectfully pointed out that if the opinion stands unchanged, the decree of the court below, modified in conformity therewith, will, on the one hand, direct that portions of the Commission's order be remanded to the Federal Trade Commission to take testimony, as Special Master, before the court will decree enforcement. On the other hand, the decree will inconsistently and concurrently direct that other parts of the same order be *presently enforced.* No statutory or any reason for contrary treatment of the various parts of the order exists.

Respondents, had in their joint answer (R. XIII), denied violation of each and every part of the desist order. Section 5 of the Federal Trade Commission Act specifically provides that a decree of enforcement is possible only if the Commission's desist order has been violated or the question of violation has been waived (15 U. S. C., § 45). Since neither of these circumstances has taken place in the instant case, enforcement has been improvidently directed by this Court in its decision.

Clarification of the court's opinion by amendment on the question of enforcement is absolutely necessary, for although punishment for contempt cannot follow the violation of the Commission's order of which enforcement has not been decreed, a violation of a decree of the court commanding obedience subjects the transgressor to punishment for contempt.

It is therefore submitted that this Honorable Court has apparently overlooked the fact that its opinion and mandate as now filed in the Circuit Court of Appeals for the Second Circuit and which are to remain under that court's exclusive jurisdiction are contrary to the Statute and not in agreement with the parts of order not appealed from and fail to properly advise the said court in the premises.

A denial of this motion leaves respondents in the precarious position of urging upon the court below, in the face of the language of this Court's opinion, that it was not the Supreme Court's intention to amend Section 5 of the Federal Trade Commission Act and that the Court used the word, "enforced" inadvertently as a synonym for the word, "affirmed".

Clearly the Supreme Court upon the above showing should recall its mandate and amend the opinion as follows:

> "From the Court's opinion, the words, "and enforced", which appear at the end of its twelfth para-

graph (82 L. Ed. 48, 50) should be deleted; the word, "enforced" at the end of the fourteenth paragraph (82 L. Ed. 48, 51), should be omitted and the word, "affirmed" inserted in its place; and at the end of its seventeenth paragraph (82 L. Ed. 48, 51) a sentence should be added to the effect that "Clause eight is affirmed".

and add to the mandate when recalled suitable language to conform to the opinion as amended.

Wherefore, respondents pray that the Supreme Court amend its opinion as above and recall its mandate for amendment to conform to the opinion as amended and that it be reissued to the Circuit Court of Appeals for the Second Circuit; and for such other and further relief as may be just in the premises.

Dated December, 1937.

Respectfully submitted,

STANDARD EDUCATION SOCIETY,
STANDARD ENCYCLOPEDIA CORPORATION,
H. M. STANFORD,
W. H. WARD, AND
A. J. GREENER,
*Respondents,*
By HENRY WARD BEER,
*Counsel for Respondents.*

I, Henry Ward Beer, counsel for the above named respondents do hereby certify that the above motion to amend opinion and to recall and amend the mandate is presented in good faith and not to delay.

HENRY WARD BEER.

P. 14

# SUPREME COURT OF THE UNITED STATES.

No. 14.—October Term, 1937.

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| Federal Trade Commission, Petitioner, *vs.* Standard Education Society et al. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit. |

[November 8, 1937.]

Mr. Justice Black delivered the opinion of the Court.

Upon application by the Federal Trade Commission this Court granted certiorari to review that part of a decree of the Circuit Court of Appeals for the Second Circuit, which modified in part and reversed in part a "cease and desist" order of the Commission. 86 F. (2d) 692. The Commission, after service of a complaint, and extensive hearings, made a finding of facts from the testimony and ordered two corporation respondents and three individuals controlling these corporations, to desist from certain practices used by respondents in furthering the sale of encyclopedias and other books in interstate commerce. The Commission not only found the practices to be "unfair" but also "false, deceptive and misleading." The court below modified and weakened the Commission's order in material aspects, and the questions here are whether the testimony supported all the findings of the Commission, and whether these findings justified the entire order as against all the respondents.

All "unfair" practices found by the Commission related wholly to methods of sale. The Commission's order against respondents was based, in part, upon the following findings:

That fictitious testimonials and recommendations had been used by respondents; that authorized testimonials and recommendations had been exaggerated and garbled; that authorized testimonials for a "previous work" were later used to further the sale of another "work, quite different in form, in material and in purpose." "For the purpose of selling their publications, Standard Reference Work and New Standard Encyclopedia" respondents advertised "a list headed 'Contributors and Reviewers' and . . . In such list they include many who have not been either contrib-

utors or reviewers to either the Standard Reference Work or the New Standard Encyclopedia." Respondents sold "their publications at retail to the public by salesmen on the subscription plan" and in carrying out said plan they represented to prospects that they were selecting a small list of "well connected representative people" in various localities, in order to present them with an "artcraft de luxe edition" of the encyclopedia. Further carrying out respondents' scheme, their agents represented that "they are giving away a set of books; that they are not selling anything; that the books are free; that the books are being given free as an advertising plan . . . that the prospect has been specially selected, and that the only return desired for the gift is permission to use the name of the prospect for advertising purposes and as a reference;" that the "said prospects are paying only for the loose leaf extension service; . . . that the price of $69.50 is a reduced price and that the regular price of the books and the extension service is $150.00, sometimes even as high as $200.00." The statements that the encyclopedia is being given away; that payment is only being made "for the loose leaf extension service;" and that "$69.50 is a reduced price . . . are false, deceptive and misleading as $69.50 is the regular, standard price" for both the encyclopedia and the loose leaf extension and research privileges.

The Court of Appeals reversed clauses one and three of the Commission's order. These clauses ordered respondents not to represent falsely to purchasers of their publications that the publishing company was giving encyclopedias to them as a gift, and that purchasers were paying only for loose leaf supplements.

The Court of Appeals affirmed clauses two and six of the Commission's order. These clauses ordered respondents not to represent falsely to purchasers that sets of books had "been reserved to be given away free of cost to selected persons" and that the usual price at which respondents' publications are sold is higher than the price "at which they are offered to such purchasers."

It is clear, both from the findings of the Commission, and the testimony upon which they rest, that the practices forbidden in clauses one, two, three and six are all tied together as parts of the

same sales plan. As a first step under this plan, salesmen obtained an audience with prospective purchasers by representations made to them that by reason of their prestige and influence they had been selected by the Company to receive a set of books free of costs for advertising purposes. After respondents' agents thus gained an audience by the promise of a free set of books, they then moved forward under the same general sales plan, by falsely representing that the regular price of the loose leaf supplement alone was $69.50, and that the usual price of both books and loose leaf supplements was much in excess of $69.50. The Commission ordered respondents not to engage in carrying out any part of this entire sales plan. However, as the Court of Appeals reversed clauses one and three of the Commission's order, a part of the sales scheme which the Commission condemned as unfair, can yet be carried out by respondents. That is to say—respondents by that reversal, are left free to continue to obtain audiences with prospects and to sell encyclopedias and loose leaf supplements to them, by false representations that the Company gives them a set of encyclopedias free, and that $69.50 paid by them to the Company, is for the loose leaf supplement alone.

In reaching the conclusion that respondents should be left free to engage in that part of the sales scheme prohibited by clauses one and three of the Commission's order, the court below reasoned as follows:

"We cannot take too seriously the suggestion that a man who is buying a set of books and a ten years 'extension service' will be fatuous enough to be misled by the mere statement that the first are given away, and that he is paying only for the second . . . Such trivial nicetie̊s are too impalpable for practical affairs, they are will-o-wisps which divert attention from substantial evils."

The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of *caveat emptor* should not be relied upon to reward fraud and deception.

The practice of promising free books where no free books were intended to be given, and the practice of deceiving unwary purchasers into the false belief that loose leaf supplements alone sell for $69.50, when in reality both books and supplement regularly sell for $69.50, are practices contrary to decent business standards. To fail to prohibit such evil practices would be to elevate deception in business and to give to it the standing and dignity of truth. It was clearly the practice of respondents through their agents, in accordance with a well matured plan, to mislead customers into the belief that they were given an encyclopedia, and that they paid only for the loose leaf supplement. That representations were made justifying this belief; that the plan was outlined in letters going directly from the companies; that men and women were deceived by them—there can be little doubt. Certainly the Commission was justified from the evidence in finding that customers were misled. Testimony in the record from citizens of ten States—teachers, doctors, college professors, club women, business men—proves beyond doubt that the practice was not only the commonly accepted sales method for respondents' encyclopedias, but that it successfully deceived and deluded its victims.

The courts do not have a right to ignore the plain mandate of the statute which makes the findings of the Commission conclusive as to the facts if supported by testimony.[1] The courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission. The record in this case is filled with evidence of witnesses under oath which support the Commission's findings. Clauses one and three of the Commission's order should be sustained and enforced.

The seventh clause of the Commission's order forbade the use of names of persons as contributors or editors who had not consented to such use and who had neither actually contributed to the publications nor helped to edit them.

The ~~Circuit Court~~ upheld this clause except as it might apply to the original contributors to Aiton's encyclopedia saying that "it seems to us not 'unfair' to announce as contributors to the derived works those who have been contributors to the original." Aiton's encyclopedia was published about 1909, and respondents' works represent the result of periodic revisions and expansions of the

[1] Federal Trade Commission Act, Sept. 26, 1914, 38 Stat. 717, U. S. C. Title 15, Sec. 45.

Court of Appeals

prior work. The Government concedes in its brief that this clause of the Commission's order does not prevent respondents from representing a person who contributed to the original, as a contributor to their revised publication, if "some of the material originally in Aiton's encyclopedia remained in the new Edition of the revised work." Respondents agree with this interpretation. As between these parties, therefore, this clause permits respondents to represent any person as a contributor to their present revised encyclopedia, if a part of his original material has been carried forward to it. If no part of his contribution to Aiton's encyclopedia has been brought forward, he is not a contributor and should not be represented as such. This clause as originally declared by the Commission would, under this interpretation, properly forbid respondents from falsely representing as contributors or editors those who had actually neither contributed to, nor edited, the publications. The decree of the court below modifying this clause is not in accordance with our conclusion, and clause seven of the Commission's order should be enforced.

The Court of Appeals reversed the eighth clause of the order of the Commission. The reason given by the court below for this action was as follows:

"For the eighth, which forbade the use of such testimonials which had not been given by the person whose name was used, we have been able to find no support in the evidence;"

We are convinced that the Commission's findings of fact justified this clause of the order and that the testimony supports these findings.[2]

The Court of Appeals entirely excluded respondent Greener from the operation of the Commission's order, and partially excluded respondents Stanford and Ward. The Commission had found from the testimony that

"Respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the managers and sole stockholders of respondent Standard Education Society, and the managers and sole incorporators of Respondent Standard Encyclopedia Corporation . . . . The

[2] From paragraphs fourteen and fifteen of the Commission's findings it appears that respondents used the names of various individuals in testimonials and that

"None of these men or this woman ever wrote any testimonial or recommendation of or concerning the New Standard Encyclopedia. The representations that these men and this woman wrote the recommendations for the so-called 'New Standard Encyclopedia' are false, deceptive and misleading."

Commission concludes and infers from the record in this case and so finds that this corporation was organized by the individual respondents for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent, the Standard Education Society."

There was ample support in the testimony for this finding of the Commission.

The Federal Trade Commission Act (*supra*) gives the Commission power to "prevent persons, partnerships or corporations, . . . from using unfair methods of competition in Commerce."

This Court has held that

"a command to the Corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance . . . they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt." Wilson *v.* United States, 221 U. S. 361, 376.

Respondents Stanford, Ward and Greener, who are in charge and control of the affairs of respondent corporations, would be bound by a cease and desist order rendered against the corporations. Since circumstances, disclosed by the Commission's findings and the testimony, are such that further efforts of these individual respondents to evade orders of the Commission might be anticipated, it was proper for the Commission to include them in its cease and desist order.

The record in this case discloses closely held corporations owned, dominated and managed by these three indivdual respondents. In this management these three respondents acted with practically the same freedom as though no corporation had existed. So far as corporate action was concerned, these three were the actors. Under the circumstances of this proceeding, the Commission was justified in reaching the conclusion that it was necessary to include respondents Stanford, Ward and Greener in each part of its order if it was to be fully effective in preventing the unfair competitive practices which the Commission had found to exist. The court below was in error in excluding these respondents from the operation of the Commission's order.

The decree below will be reversed except as to modification of clause ten of the Commission's order, and the cause is remanded with instructions to proceed in conformity with this opinion.

*Reversed.*